

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1941

No. 1036

CHRYSLER CORPORATION, DE SOTO MOTOR CORPORATION, PLYMOUTH MOTOR CORPORATION, DODGE BROTHERS CORPORATION AND CHRYSLER SALES CORPORATION, APPELLANTS,

VS.

THE UNITED STATES OF AMERICA

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF INDIANA**

FILED MARCH 13, 1942.



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[fol. 1]

**IN DISTRICT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF INDIANA, SOUTH
BEND DIVISION**

In No. 9 Civil

UNITED STATES OF AMERICA, Complainant,

v.

CHRYSLER CORPORATION, et al., Defendants

COMPLAINT—Filed November 7, 1938

To the Honorable the Judge of the District Court of the United States for the Northern District of Indiana, Sitting in Equity:

The United States of America, by James R. Fleming, United States Attorney for the Northern District of Indiana, acting under the direction of the Attorney General of the United States, brings this proceeding in equity against Chrysler Corporation, De Soto Motor Corporation, Plymouth Corporation, and Commercial Credit Company, all of which are organized and duly authorized to do business under the laws of the State of Delaware; the Chrysler Sales Corporation and Dodge Brothers Corporation, both organized and duly authorized to do business under the laws of the State of Michigan; the Commercial Credit Company, a corporation organized and duly authorized to do business under the laws of the State of Pennsylvania; the Commercial Credit Company, a corporation organized and duly authorized to do business under the laws of the State of Iowa; Commercial Credit Company, a corporation organized and duly authorized to do business under the laws of the State of Michigan; Commercial Credit Company, a corporation organized and duly authorized to do business under the laws of the State of Minnesota; Commercial Credit Company, a corporation organized and duly authorized to do business under the laws of the State of Missouri; Commercial Credit Company, a corporation organized and duly authorized to do business under the laws [fol. 2] of the State of Illinois; Commercial Credit Company, Inc., a corporation organized and duly authorized to

do business under the laws of the State of Wisconsin; Commercial Credit Corporation, a corporation organized and duly authorized to do business under the laws of the State of New Jersey; Commercial Credit Company, a corporation organized and duly authorized to do business under the laws of the State of Indiana; all of which corporations have and have had at all material times branch offices and places of business in nearly all of the several states, and are doing business therein, including the State of Indiana, the Northern District, South Bend Division, and complains and alleges upon information and belief as follows:

I

That defendant, Chrysler Corporation, is engaged in the manufacture and sale of Chrysler, Dodge, De Soto and Plymouth automobiles; that defendants, Dodge Brothers Corporation, De Soto Motor Corporation, Plymouth Motor Corporation and Chrysler Sales Corporation, are engaged in the purchase, sale and distribution of Chrysler cars (Chrysler cars when referred to herein include Chrysler, De Soto, Dodge and Plymouth cars); that the five last named corporations are associated together and commonly called the Chrysler Group (when the term Chrysler Group is used hereinafter it will include the aforesaid five corporations); that the remaining defendants herein are engaged in the business of financing the purchase and sale of automobiles, including Chrysler automobiles, by advancing funds to automobile dealers for the purchase at wholesale and to the public at retail of such automobiles; that defendant, Commercial Credit Company of Delaware, a corporation, is both a holding company and an operating company and owns 100% of the capital stock of all of the other defendant finance companies named hereinabove and controls such companies; that all of the aforesaid defendant finance companies are associated together (when the term Commercial Credit Company is used hereinafter it shall be taken to include all of the defendant finance companies); that in the year 1925, the Chrysler Corporation became desirous of creating a relationship between itself and a finance company by which the sale of automobiles to dealers and to the public would be facilitated, and under which credit [fol. 3] might be extended so that the output of the Chrysler Corporation might be increased and a system of selling cars on conditional sale to the public fostered; that as a result

thereof the Chrysler Corporation in 1925, and thereafter in 1926, entered into written contracts with the Commercial Credit Company, under the terms of which the Commercial Credit Company agreed to furnish a standard finance plan for the purchase and sale at both wholesale and retail of Chrysler cars in every part of the United States in which Chrysler had an outlet; that under the aforesaid contracts the Chrysler Corporation agreed to subsidize Commercial Credit Company for assisting in accomplishing the results set out above; that under the terms of such contracts the Commercial Credit Company agreed that it would not represent to Chrysler dealers and others that it was authorized to act as representative and associate of defendant Chrysler Corporation; that during the period when the aforesaid contracts were in effect Chrysler Corporation paid to Commercial Credit Company as subsidies under said contracts the sum of approximately \$2,600,000; that in 1928, and again in 1934, the aforesaid contracts were modified and superseded by other contracts; that under the terms of the 1928 contract the Commercial Credit Company agreed to pay the Chrysler Corporation \$1 per car for every Chrysler car financed by Commercial Credit Company; that under the terms of the 1934 contract the Commercial Credit Company agreed and promised to pay to Chrysler Corporation 10% of its gross annual net income from all sources (only 60% of the gross income of Commercial Credit Company arises from the financing of automobiles); that under the terms of the said 1934 contract and by virtue thereof and as consideration therefor, Commercial Credit Company transferred to Chrysler Corporation 50,000 shares of its capital stock; that under the terms of both the 1928 and 1934 contracts Commercial Credit Company was permitted to advertise, announce, and represent to Chrysler dealers that it was authorized to handle all matters pertaining to the financing of cars manufactured by any of the Chrysler Group, and the Chrysler Group agreed and promised that they would use all means necessary to compel dealers who sold cars manufactured by any of the Chrysler Group to finance exclusively through the facilities of the Commercial Credit Company; that as part of the consideration for the aforesaid promises and for entering [fol. 4] the aforesaid contracts of 1928 and 1934, the Commercial Credit Company has paid to Chrysler Corporation the sum of approximately \$2,500,000;

That defendants and each of them have been and are violating the provisions of Section I of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies", 26 Stat. 209, commonly known as the Sherman Antitrust Act;

That under Section 4 of the above-named Act the District courts of the United States are invested with jurisdiction to prevent and restrain violations of the Act;

That under Section 4 of the Act it is the duty of the several District Attorneys of the United States in their respective districts, under the supervision of the Attorney General, to institute proceedings in equity to prevent and restrain violations, and that such proceedings may be instituted by way of a complaint setting forth the case and praying that such violation shall be enjoined or otherwise prohibited;

The defendants and each of them for a period of three years immediately preceding the filing of this complaint, and for many years prior thereto, have been and are guilty of violation of Section I of the Sherman Act in all parts of the United States, as well as in the Northern District of Indiana, South Bend Division, by combining and conspiring together to restrain and control the trade and commerce in Chrysler automobiles and the wholesale and retail sale and financing of Chrysler automobiles among the several states, and will continue such violations unless enjoined;

That defendants and each of them are within the jurisdiction of this Court for purposes of service.

II

Complainant alleges and complains further that the Chrysler Group (hereinafter called Chrysler), the General Motors Corporation (hereinafter called General Motors), and the Ford Motor Company (hereinafter called Ford) are the principal manufacturers of motor cars in the United States and are competitors with each other; that for many years past, and particularly during the three-year period immediately preceding the filing of this complaint, Chrysler, General Motors and Ford have manufactured, sold and [fol. 5] delivered at wholesale approximately 90% of the automobiles manufactured in the United States, of which respondent, Chrysler, has manufactured and sold approximately 25%; that the remaining 10% have been manu-

factured, sold and delivered by some 12 to 15 other manufacturers;

That during the period from January 1, 1934, to the date of the filing of this complaint, approximately 16,000,000 automobiles have been manufactured, sold and delivered at wholesale and retail in the United States; that of these General Motors has produced approximately 7,000,000, Chrysler approximately 4,000,000, Ford approximately 4,000,000, and the 12 or 15 other manufacturers, approximately 1,000,000;

That the automobiles of Chrysler are and have been at all material times manufactured at plants located in the States of Michigan, Indiana and California; those of Ford, at plants located in the States of Michigan, Minnesota, Illinois, Ohio, Pennsylvania, New York, New Jersey, Massachusetts, Virginia, Kentucky, Missouri, Georgia, Texas and California; those of the General Motors Corporation, at plants located in the States of Michigan, Wisconsin, Missouri, Georgia, New York, New Jersey and California;

That these automobiles are and at all material times have been manufactured, transported, sold, financed, and delivered in interstate commerce, each of the above steps being necessary and integral parts of a continuous flow of commerce in getting automobiles from the manufacturers to retail purchasers in the several states, including retail purchasers located in the Northern District of Indiana, South Bend Division, and that the evils complained of herein are incident to, a part of, and directly affect commerce among the several states and the flow thereof;

That the sale of motor-cars manufactured by Chrysler, General Motors and Ford to the public is and at all material times has been made through some 40,000 persons, companies and corporations known as automobile dealers, of whom approximately 10,000 are Chrysler dealers, located throughout the several states, who are engaged in the business of buying and selling automobiles; that dealers purchase new automobiles from the manufacturers and their associates pursuant to contracts which are subject to cancellation at the will of either party; that cars, including Chrysler cars, when purchased by dealers, have been and [fol. 6] will continue to be transported from the above-named places of manufacture to dealers located in the several states, including many dealers located in the Northern District of Indiana, South Bend Division;

That during the three-year period immediately preceding the filing of this complaint, as well as during many years prior thereto, Chrysler, General Motors and Ford have required and will continue to require payment in cash at the factory for all cars sold by them, prior to transportation and delivery thereof in interstate commerce from the factory to dealers located in the several states, as well as many dealers located in the Northern District of Indiana, South Bend Division;

That during the past three years approximately \$12,500,000,000 has been paid to automobile manufacturers for new cars shipped to dealers, of which approximately \$6,500,000,000 has been paid for cars manufactured by General Motors, \$2,500,000,000 for cars manufactured by Chrysler, and \$2,500,000,000 for cars manufactured by Ford, and approximately \$1,000,000,000 for cars manufactured by the remaining 12 to 15 automobile manufacturers;

That because of the high unit prices of automobiles demanded by General Motors, Ford, and respondent Chrysler, and because said manufacturers have required payment for cars in cash before shipment and delivery to dealers, it has been necessary for the great majority of dealers to secure money in large quantities from sources other than their own; that in order to supply these necessary funds many automobile finance companies have been organized and have been regularly and continuously engaged in the business of lending funds to such dealers for the purchase of cars from the manufacturers, which loans are secured by the cars so purchased; that there are three major groups of finance companies (hereinafter referred to as the "affiliated finance companies") engaged in the business of supplying funds to dealers for the purchase of automobiles, and that each of said groups of companies is affiliated with one of the major manufacturers pursuant to stock ownership, contract or working agreement; that respondent, Commercial Credit Company, is affiliated with Chrysler through contractual agreement and partial stock ownership; that Commercial Investment Trust Corporation, Commercial Investment Trust, Incorporated, Universal Credit Corporation, Universal Credit Company of Delaware, Universal Credit [fol. 7] Company of Indiana, and Universal Credit Company, Inc. are affiliated with Ford, originally by stock ownership and currently by working agreement; the General Motors Acceptance Corporation and its subsidiary com-

panies with General Motors through 100% stock ownership of the former by the latter; that the affiliated finance companies have furnished the major portion of the funds required by dealers of the three above-named manufacturers in financing their purchases of new cars; that in addition to the affiliated finance companies there are approximately 375 finance companies, as well as banks and other lending institutions, which have no relation to the three major manufacturers either by stock ownership, contract or working agreement (arbitrarily referred to herein as "independent finance companies") which are located in all states in the United States and are there engaged, either in whole or in part, in financing the sale of automobiles by manufacturers to dealers; that during the three-year period immediately preceding the filing of this complaint the affiliated and independent finance companies have supplied to dealers of the three above-named automobile manufacturers for purposes of financing such dealers' purchase of new cars approximately \$5,500,000,000, of which the affiliated finance companies have supplied approximately \$4,500,000,000 and the independent finance companies have supplied approximately \$1,000,000,000; that during the same three-year period the Commercial Credit Company and its affiliates have financed approximately 67% of the Chrysler cars supplied to Chrysler dealers and independent finance companies have financed the remaining 33%;

That approximately 60% of the new cars manufactured by the three above-named manufacturers at all material times have been sold at retail by dealers upon the so-called installment plan which requires the purchaser to pay a part of the purchase price at the time of the sale, either in cash or in a used car, or both, with the remainder to be paid in installments; that since dealers have been unable generally to finance such sales on credit with their own funds, the affiliated and independent finance companies have advanced funds to individual purchasers of new cars who purchase them on the installment plan; that the funds so advanced are secured by the installment note of the purchaser, indorsed by the dealer with or without recourse, as the case may be, and secured by the pledge of the automobile so purchased; that during the three years immediately preceding the filing of this complaint approximately 6,500,000 new cars have been sold on the installment plan; that affiliated and independent finance companies have furnished

approximately \$6,000,000,000 to purchasers, \$5,000,000,000 of which has been supplied by the affiliated finance companies and \$1,000,000,000 by the independent finance companies; that during said period Commercial Credit Company and its affiliates have supplied approximately 65% of of the funds required to finance the retail time sales of Chrysler dealers.

III

Complainant alleges and complains further that each of the three major automobile manufacturers, General Motors, Ford, and respondent, Chrysler, together with their respective affiliated finance companies, General Motors Acceptance Corporation, Universal Credit Corporation and its affiliates, and respondent, Commercial Credit Company and its affiliates, respectively, have at all material times conspired separately to impede unreasonably the free flow of commerce in automobiles and in the financing thereof in the several states, as well as in the Northern District of Indiana, South Bend Division, by excluding or attempting to exclude all other finance companies from financing the wholesale sale of new cars to dealers and the retail sale of used cars by dealers; that respondent, Chrysler Corporation, and respondent, Commercial Credit Company (including all respondent finance companies) have employed, among others, the following means and have done the following overt acts for the purpose of effecting the conspiracies herein alleged, to wit:

1. That Chrysler dealers, numbering approximately 10,000, during the three-year period immediately preceding the filing of this complaint have been coerced, intimidated and discriminated against by the said respondent Chrysler for the purpose and with the effect of forcing them to use the services and facilities of respondent finance companies herein, in financing both wholesale and retail purchases of Chrysler motor-cars;

2. That Chrysler dealers have been required by Chrysler to promise to use the facilities of respondent finance companies under threats of cancellation of their dealer contracts with Chrysler;

[fol. 9] 3. That dealers refusing to make their purchases and sales of Chrysler cars through respondent finance companies, in many instances, have had their dealer contracts

cancelled by Chrysler without notice and without statement of cause;

4. That Chrysler has refused to deliver cars to dealers refusing the use of such services;

5. That Chrysler has delivered to dealers who failed to finance through respondent finance companies cars on occasions when none were ordered;

6. That Chrysler has delayed unduly shipments of cars ordered by dealers who refused to use the facilities of respondent finance companies;

7. That Chrysler has shipped to dealers who refused to use the facilities of respondent finance companies cars of different color, design, model, style and number than those ordered, and have favored those dealers availing themselves of the services of respondent finance companies with respect to services, facilities, privileges, and conveniences in the delivery of cars;

8. That Chrysler dealers are and have been at all material times required by respondent, Chrysler, to permit respondent finance companies to inspect their books, records and accounts for the purpose of determining the amount of financing done by the dealers with respondent finance companies, as well as with the independents, and that such privileges have been and are denied independent finance companies;

9. That Chrysler dealers have been and are required by respondent, Chrysler, to disclose the amount of finance business done with independent finance companies;

10. That respondent, Chrysler, by various means, divulges to respondent finance companies or permits them to secure from the agents, servants and employees of Chrysler dealers information relative to the finance business done by such dealers with independent finance companies, which privileges are denied the independent finance companies;

11. That Chrysler furnishes respondent finance companies with office space in its factories enabling the latter to determine the number of cars ordered by individual [fol. 10] dealers and other information relating to their business, and convenient facilities for carrying on their

finance business, which privilege is denied the independent finance companies;

12. That respondent, Chrysler, permits representatives of respondent finance companies to attend Chrysler district, divisional and national sales meetings with Chrysler dealers for the purpose of urging such dealers to patronize respondent finance companies, which privileges are denied the independent finance companies;

13. That respondent, Chrysler, furnishes respondent finance companies with all contracts with dealers and other instruments deemed necessary to security in delivering cars to dealers, which privileges are denied the independent finance companies;

14. That respondent, Chrysler, advertises, indorses and recommends the financing services of respondent finance companies;

15. That respondent, Chrysler, furnishes respondent finance companies with information relating to the purchase, sale, transportation and delivery of cars to Chrysler dealers, including a description and identification of cars, and refuses the same to independent finance companies;

16. That Chrysler passes title to Chrysler cars financed through the facilities of the respondent finance companies to those finance companies before the car is shipped to the dealer, the latter securing only possession and custody, and accepts payment from respondent finance companies for such cars, while it refuses to accept payment for cars from independent finance companies or to pass title to them but will accept payment for cars financed by independent finance companies only from the dealer and will deliver title only to the dealer;

17. That dealers financing retail time sales through respondent finance companies are required by the latter to indorse the notes of the retail purchaser with recourse and thus to assume a secondary liability for their payment;

18. That respondent finance companies require dealers to include in the charge made by them to retail purchasers [fol. 11] for financing the sale of Chrysler automobiles on the installment plan a so-called dealers' reserve in an amount fixed and prescribed by them, which is in addition

to interest, insurance and all other charges made by the dealer; that the alleged purpose of such reserve is to compensate the dealer for losses sustained by him in case of default by the purchaser in the payment of the full purchase price of the automobile purchased by him; that such reserves, when paid by the purchaser to the respondent finance company, are retained by it until the purchaser's obligation has been paid in full, at which time it is either paid over to the dealer or retained further as security for the payment of other obligations of the dealer to respondent finance companies; that such dealers' reserve is not fixed by respondent finance companies on an actuarial basis and is and has been far in excess of actual losses sustained by dealers; that purchasers of automobiles from Chrysler dealers are not advised that any dealers' reserve is included in the charge made for such purchase; that this reserve is in the nature of a rebate to dealers to induce them to use the services of respondent finance companies and increases unduly the time sales purchase price to the automobile purchaser; that during the period from 1925 to and including the date of the filing of this complaint, respondent finance companies have paid to dealers as such reserves sums totalling more than \$5,000,000; that respondent finance companies now have in their possession large sums of money, to wit, many millions of dollars in the form of dealer reserves collected from purchasers without their knowledge and not yet rebated to dealers;

19. That respondents have discriminated against independent finance companies with respect to the manner, form and time of payment for time sales paper purchased by them;

20. That for the purpose of inducing Chrysler dealers to make use of their services, respondent finance companies have represented to such dealers that Chrysler would discriminate against them in the time and manner of delivery of automobiles to them and otherwise unless such dealers made use of the services of respondent finance companies; that agents of Chrysler and respondent finance companies, by prearrangement, have jointly visited dealers with the purpose and effect, by threats, persuasion and intimidation, [fol. 12] of inducing such dealers to make use of the services of respondent finance companies;

21. That, unless enjoined, Chrysler will hereafter, in pursuance of the conspiracy herein alleged, discriminate against independent finance companies and in favor of respondent finance companies by the acquisition of stock or other interest in respondent finance companies or by making loans or gifts to respondent finance companies and denying same to independent finance companies;

22. That at all times material and within the three years immediately preceding the filing of this complaint, as well as for many years prior thereto, respondents and all of them have regularly and continuously carried out, performed, engaged in and committed all of the acts, practices, arrangements, agreements, discriminations, threats and wrongs described hereinabove in all states of the United States, as well as in the Northern District of Indiana, South Bend Division, and unless enjoined will continue so to do.

IV

Complainant alleges and complains further that the purpose and effect of the aforementioned practices of respondents have been to procure, restrain and keep within their control to the greatest extent possible and to the exclusion of all other persons, companies and corporations, the business of financing the trade and commerce of new Chrysler automobiles among the several states and in used automobiles of any make and model handled by Chrysler dealers; that substantial investments, credit and property of many Chrysler dealers have been either destroyed, reduced in value or jeopardized by the practices described hereinabove; that the retail price of automobiles to the public has been increased unreasonably by such practices; that such practices have jeopardized and destroyed the business of independents; that such practices have been pursued by respondents continuously for the three-year period immediately preceding the filing of this complaint, as well as for many years prior thereto; that such acts and practices are continuous and will continue in the future unless restrained, enjoined and prohibited by this Court.

Wherefore, complainant prays that respondent, Chrysler Corporation, and its officers, directors, agents and serv- [fol. 13] ants be restrained, enjoined and prohibited from doing or causing to be done any of the following:

1. From coercing its dealers in the manner described in particular hereinabove, or in any way, to use the financing facilities of respondent finance companies;

2. From discriminating in ways more particularly set out hereinabove, or in any way, against Chrysler dealers who do business with independent finance companies;

3. From discriminating against independent finance companies in the financing by Chrysler dealers of both wholesale and retail purchases of Chrysler cars, and used cars taken by dealers on trade in the sale of new cars;

4. From requiring any dealer by threats, intimidation, contractual arrangement or otherwise, to use a particular plan or rate of financing;

5. From cancelling or threatening to cancel any contract, franchise or agreement with any dealer because of failure of such dealer to patronize respondent finance companies;

6. From agreeing with any finance company that an agent of the finance company and the manufacturer will be present for the purpose of influencing the dealer to patronize any particular finance company;

7. From recommending or advertising any particular finance company to any dealer or to the public;

8. From acquiring in any way an interest in any finance company or by gift, loan or otherwise rendering financial assistance to any finance company.

Complainant prays further:

1. That respondent, Chrysler Corporation, its officers, directors, agents and servants, be required to make available to independent finance companies privileges, services and facilities substantially similar to those made available to respondent finance companies, without discrimination, including space in the factory, information relating to identity of dealers and amount of business done with competitors, attendance at district, division, factory and national sales meetings, provided such privileges are accorded respondent finance companies;

[fol. 14] 2. That respondent, Chrysler Corporation, its officers, directors, agents and servants, be required to as-

sign title or lien to all cars sold to dealers to any and all finance companies on similar terms.

Complainant prays further that respondent finance companies and each of them, their officers, directors, agents and servants, be restrained, enjoined and prohibited from doing or causing to be done any of the following:

1. From representing to any dealer that the manufacturer requires him to patronize any particular finance company;
2. From representing to any dealer that his franchise will be cancelled for failure to patronize respondent finance companies;
3. From requiring dealers to include in their retail time sales price of automobiles any sum in the form of a dealers' reserve, rebate, pack or otherwise.

Complainant prays further that discriminations of all types as between affiliated finance companies and independents be prohibited; that all automobile finance companies be treated alike or in such manner as the Court may deem necessary and proper to maintain the good-will of the manufacturer.

Complainant prays further that respondents, Chrysler Corporation and Commercial Credit Company, be required to cancel the contract existing between them under the terms of which Commercial Credit Company pays annually to Chrysler Corporation 10% of its net gross revenues from all sources.

Complainant prays further that this Court retain continuing jurisdiction of this cause for purposes of carrying out the matters herein prayed for, and for such further order or orders and for such other and further relief as the Court may deem necessary, equitable, just and proper in the premises.

James R. Fleming, United States Attorney for the Northern District of Indiana.

Homer Cummings, Attorney General of the United States. Thurman Arnold, Assistant Attorney General of [fol. 15] the United States. John J. Abt, Holmes Baldridge, Special Assistants to the Attorney General of the United States.

IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF DEFENDANTS, CHRYSLER CORPORATION, DeSOTO MOTOR CORPORATION, PLYMOUTH MOTOR CORPORATION, DODGE BROTHERS CORPORATION AND CHRYSLER SALES CORPORATION—Filed November 7, 1938

To the Honorable the Judge of the District Court of the United States for the Northern District of Indiana, Sitting in Equity:

Now come the defendants Chrysler Corporation, DeSoto Motor Corporation, Plymouth Motor Corporation (referred to in the complaint as Plymouth Corporation), Dodge Brothers Corporation and Chrysler Sales Corporation, and make answer to the complaint in the above-entitled cause, as follows:

I

They allege that the complaint herein fails to state a cause of action against the defendants, or any of them, upon which relief can be granted.

II

Answering the first unnumbered paragraph of the complaint, these answering defendants deny that they or any of them have, or at any time have had, branch offices or places of business, or are doing business, in the Northern District of Indiana, and deny that they have any knowledge or information thereof sufficient to form a belief as to the incorporation of the defendants herein other than these answering defendants, as to where said other defendants are authorized to do business, or as to where they have or have had branch offices or places of business, or as to where they are doing business.

III

Answering that article of the complaint, marked and numbered "I", these answering defendants deny each and [fol. 16] every allegation therein set forth except as hereinafter expressly admitted or qualifiedly denied:

They admit that defendant Chrysler Corporation is engaged in the manufacture and sale of Chrysler, Dodge,

10

DeSoto and Plymouth automobiles; that defendants Dodge Brothers Corporation, DeSoto Motor Corporation, Plymouth Motor Corporation and Chrysler Sales Corporation are subsidiaries of defendant Chrysler Corporation; that the defendants herein other than these answering defendants are engaged in the business of financing the purchase and sale of automobiles, including Chrysler automobiles, and that on or about the 11th day of June, 1925, Chrysler Sales Corporation made and entered into a certain agreement with Commercial Credit Company and certain of its subsidiaries, and these answering defendants beg leave to refer to said contract for the exact and complete purposes, terms, and conditions thereof. They admit that on or about the 22nd day of May, 1926, Chrysler Sales Corporation made and entered into a certain contract with Commercial Credit Company, and these answering defendants beg leave to refer to said contract for the exact and complete terms and conditions thereof. They admit that during the period when said contracts were in effect these answering defendants or some of them from time to time paid to Commercial Credit Company, pursuant to said contracts, sums of money aggregating approximately the amount set forth in the complaint herein. They admit that on or about the 22nd day of November, 1928, these answering defendants, except Chrysler Corporation, made and entered into a certain contract in writing with Commercial Credit Company and that on or about the 10th day of December, 1934, Chrysler Corporation made and entered into a certain contract in writing with Commercial Credit Company, and these answering defendants beg leave to refer to said contracts for the exact and complete terms and conditions thereof. They admit that said contract dated November 22, 1928, provided, among other things, that Commercial Credit Company's representatives should not make any statements to distributors or dealers to the effect that Commercial Credit Company's plan of financing was required to be used to the exclusion of any other equally favorable finance plan, and that these answering defendants who were parties thereto agreed to discourage the use by distributors and dealers of financing plans provided by [fol. 17] other finance companies on a basis less favorable to time payment purchasers of automobiles than those provided by Commercial Credit Company and its affiliated companies; that under the terms of said contract dated

December 10, 1934, the defendant Chrysler Corporation agreed, among other things, by proper means, to encourage, recommend, and endeavor to bring about the use by its dealers of the financing plans and facilities of Commercial Credit Company, but these answering defendants deny that they, or any of them, under the terms of said contracts, or any of them, or otherwise, agreed or promised to use all means necessary, or otherwise, to compel dealers to finance purchases and sales of automobiles exclusively through the facilities of Commercial Credit Company or any other finance company. They admit that Commercial Credit Company from time to time paid to Chrysler Corporation, pursuant to the terms of said contracts dated November 22, 1928 and December 10, 1934, sums of money in excess of the amount set forth in the complaint herein, and they admit that Commercial Credit Company sold to Chrysler Corporation, for cash, 50,000 shares of the capital stock of Commercial Credit Company.

With respect to the allegations set forth in the last five paragraphs of said Article I of the complaint herein, the answering defendants deny the same, except that they admit that under Section 4 of the Act therein referred to the district courts are invested with jurisdiction to prevent and restrain violations of said Act and that it is the duty of the several district attorneys of the United States in their respective districts, under the supervision of the Attorney General, to institute proceedings as therein set forth.

These answering defendants deny that they have knowledge or information sufficient to form a belief as to whether or not the defendant Commercial Credit Company of Delaware is both a holding company and an operating company and owns 100% of the capital stock of all of the other defendant finance companies and controls such companies.

IV

Except as hereinafter specifically admitted or denied, these answering defendants are without knowledge, or information sufficient to form a belief as to each and every [fol. 18] allegation set forth in that article of the complaint marked and numbered "II", and therefore deny the same.

They admit that Chrysler Corporation, General Motors Corporation, and Ford Motor Company are the principal

manufacturers of motor cars in the United States and are competitors with each other, and that Chrysler Corporation manufactured, sold, and delivered at wholesale in the United States approximately 2,450,000 automobiles during the three years next preceding the filing of the complaint herein.

They admit that during the period from January 1, 1934, to the filing of the complaint herein Chrysler Corporation and its subsidiaries have manufactured, sold and delivered approximately 3,700,000 automobiles at wholesale in the United States.

They admit that said automobiles are and have been manufactured at plants located in the States of Michigan, Indiana, and California.

They admit that certain of said automobiles have been transported in interstate commerce, but deny that said automobiles have been manufactured, sold, financed, or delivered in interstate commerce, and deny that each of the acts mentioned in the complaint is a necessary or integral part of a continuous flow of commerce in getting automobiles from Chrysler Corporation to retail purchasers in the several states and in the Northern District of Indiana, and deny that the acts, practices, and things complained of in the complaint are incident to, a part of, or directly affect, commerce among the several states and the flow thereof.

They admit that the sale of automobiles manufactured by Chrysler Corporation and its subsidiaries to the public is and at all material times has been made through persons, companies, and corporation known as automobile dealers, of whom they are now approximately 10,000 located throughout the several states, who are engaged in buying and selling automobiles, of whom approximately 2,500 are direct dealers and of whom approximately 7,500 are sub-dealers under said direct dealers. They admit that said direct dealers purchase new automobiles from Chrysler Corporation pursuant to contracts, which, subject to certain conditions and limitations, are cancellable by either party thereto, and that automobiles manufactured by Chrysler Corporation have been and will continue to be transported from the above-named places of manufacture to dealers [fol. 19] located in the several states, including dealers located in the Northern District of Indiana, South Bend Division.

They admit that during the three year period immediately

preceding the filing of the complaint herein, the terms of sale of automobiles by Chrysler Corporation to dealers located in the several states, including dealers in the Northern District of Indiana, South Bend Division, have, in most instances, called for payment therefor in cash or its equivalent, either at the factories or at points to which such automobiles are shipped.

They admit that during the past three years approximately \$1,600,000,000 has been paid to Chrysler Corporation for new automobiles manufactured by it, of which approximately \$1,300,000,000 has been paid to it for automobiles manufactured in the United States.

• They admit that many dealers in automobiles manufactured by Chrysler Corporation have secured money in large quantities from sources other than their own, but deny that this was because of the high unit prices of automobiles demanded by these answering defendants, or any of them, or because these answering defendants, or any of them, required payment for cars in cash before shipment and delivery to dealers. They admit that many automobile finance companies have been organized and have regularly and continuously engaged in the business of lending funds to, or advancing moneys for the account of, automobile dealers for the purchase of automobiles from these answering defendants, and that said loans and advances are, in some instances, secured by liens on or title to the automobiles so purchased. They deny that any finance company or group of finance companies is now affiliated with these answering defendants, or any of them, pursuant to stock ownership, contract, working agreement or otherwise, or that respondent Commercial Credit Company is affiliated with these answering defendants, or any of them, through contractual agreement or partial stock ownership, or otherwise, and they allege that in or about the month of January, 1938, all contracts and agreements referred to in the complaint and then in existence between Commercial Credit Company and any of these answering defendants were in all respects terminated, and since in or about the month of February, 1938, these answering defendants have not had, and they do not now have, any interest in any stock of Commercial [fol. 20] Credit Company. They deny, upon information and belief, that Commercial Credit Company has furnished the major portion of the funds required by dealers in automobiles manufactured by Chrysler Corporation in financing

their purchases of new cars. They admit that there are finance companies, banks and other lending institutions which have no relation to these answering defendants either by stock ownership, contract, or working agreement, which are located in the United States and are there engaged, either in whole or in part, in financing the sale of automobiles by manufacturers to dealers. They deny that Commercial Credit Company and its affiliates have supplied approximately 65% of the funds required to finance the retail time sales of new automobiles manufactured by Chrysler Corporation and sold on the installment plan.

V

They deny each and every allegation contained in that Article of the complaint herein marked and numbered "III" in so far as the same pertains to the defendants herein, and deny that they have any knowledge or information thereof sufficient to form a belief as to the allegations contained in said Article in so far as the same pertain to any other person, firm, or corporation, and without limiting the generality of the foregoing, these answering defendants specifically deny that they conspired with anybody for any purpose and specifically deny that they have employed any of the means or done any of the overt acts alleged in paragraphs numbered 1 to 20, inclusive, of said Article III, or have employed any other means or done any other overt acts, for the purpose of effecting the conspiracies alleged in the complaint herein, or any other conspiracy or conspiracies, and further these answering defendants deny that they have carried out, performed, engaged in, or committed any of the acts, practices, arrangements, agreements, discriminations, threats, and wrongs described in said Article III in any of the states of the United States, or in the Northern District of Indiana, or that they will do so, or that they have discriminated or will discriminate against any finance companies and in favor of respondent finance companies, as, or for the purposes, alleged in paragraphs 21 and 22 of said Article III of the complaint, or otherwise.

[fol. 21]

VI

These answering defendants deny each and every allegation contained in that article of the complaint marked and numbered "IV".

VII

Further answering the complaint herein these answering defendants allege:

1. No provision of the contracts mentioned in Article III of the complaint obligated these answering defendants to require dealers to do business with respondent finance companies but on the contrary these answering defendants never promised or agreed to require any of their dealers, or to inform any dealer that he was required, to do business with the respondent finance companies. Said contracts and agreements were entered into by such of these answering defendants as were parties thereto in good faith and for the sole and exclusive purpose of making available to Chrysler dealers and their customers fair and uniform retail time sales plans and practices comparable to the plans and practices available to competing dealers and their customers, and for the purpose of eliminating abuses then prevalent in the business of financing installment sales and thus encouraging the purchase of said defendants' products and insuring to retail purchasers thereof a low cost of purchasing automobiles on installment payment plans.

2. At all the times mentioned in the complaint these answering defendants have repeatedly instructed their representatives not to require or compel any dealer to use the services and facilities of the respondent finance companies and in truth and fact have repeatedly and expressly forbidden their said representatives to require any dealer to do business with the respondent finance companies and forbidden any representative to discriminate against any dealer for doing business with other finance companies or to discriminate against other finance companies.

3. These answering defendants are informed after a thorough investigation of the facts and therefore allege that in each year since January 1, 1934, only ten percent (10%) of their dealers have sold all of their retail time sales paper exclusively to respondent finance companies; twenty-five [fol. 22] percent (25%) of their dealers have sold part of their retail time sales paper to the respondent finance companies and part of it to other finance companies; and sixty-five percent (65%) of their dealers have sold no retail time sales paper at all to respondent finance companies.

4. At all the times mentioned in the complaint these answering defendants have made, or approved and renewed or approved the renewal of, contracts with a large majority of their dealers with knowledge that such dealers were doing business with finance companies other than respondent finance companies, and these answering defendants intend to, and will, make, approve, renew, and approve the renewal of, contracts with such dealers, and these answering defendants are informed after a thorough investigation of the facts, and verily believe and therefore allege, that in no instance has a dealer's contract with these answering defendants, or any of them, been cancelled or terminated because such dealer did business with finance companies other than the respondent finance companies.

5. These answering defendants have repeatedly informed their dealers and also finance companies, orally and in writing, publicly and in individual instances, that no such dealer is or has ever been required or compelled to do business with the respondent finance companies, or any of them, and that fact is and long has been well known to and understood by said dealers, and to finance companies generally.

6. There have long been practices by many finance companies in collaboration with automobile dealers of obtaining by various devices from retail purchasers of automobiles on the installment plan unduly high finance charges. Other manufacturers of automobiles, competitors of these answering defendants, had provided facilities by which purchasers at retail of their automobiles might buy them on the installment plan without paying more than fair and reasonable finance charges. These answering defendants entered into the contracts with the respondent finance companies in good faith and in order that the retail purchasers on the installment plan of automobiles made by Chrysler Corporation might also have available to them fair and reasonable finance charges, and in order that Chrysler Corporation might compete on an equal basis with its competitors in selling automobiles.

7. Under the agreements between these answering defendants and Commercial Credit Company, and in order to meet competition of other automobile manufacturer-, time payment charges available to installment buyers of Chrysler Corporation products have been greatly reduced, to the great benefit of the time-buying public. Many finance companies have not reduced their rates to meet these reductions;

others have collaborated with automobile dealers to obtain additional sums for themselves and the dealers in the guise of finance charges, all to the detriment of time payment purchasers of automobiles.

8. These answering defendants have not at any time interfered or exerted influence in any negotiations or arrangements between their dealers and the respondent finance companies concerning agreements of the respondent finance companies to pay reserves to Chrysler dealers or the reserves that the finance companies paid to the dealers or held for the account of said dealers, but in every instance the finance companies negotiated and agreed with the dealers without interference or influence on the part of these answering defendants.

9. By providing fair and reasonable time payment plans and facilities to Chrysler dealers and their customers as aforesaid, and by encouraging the use by Chrysler dealers of time payment plans, which did not require installment buyers of Chrysler products to pay higher finance charges, these answering defendants have been able to compete with other leading manufacturers of automobiles. By this competition they have intended to enable, and have enabled, time payment buyers of Chrysler products to save many millions of dollars which otherwise they would have had to pay as finance charges, and by means of their having thus benefited retail purchasers of automobiles on the installment plan in financing purchases and sales of automobiles, these answering defendants have greatly extended the market for their products, and the employment of workers in their plants, and have enabled many thousands of persons to buy their products who otherwise would have been unable to do so.

[fols. 24-28] Wherefore, these answering defendants respectfully pray that the complaint herein be dismissed.

Will G. Crabill, Office and P. O. Address: J. M. S. Building, South Bend, Indiana; Larkin, Rathbone & Perry, by Nicholas Kelley, Office and P. O. Address: 70 Broadway, New York, N. Y., Attorneys for Defendants Chrysler Corporation, DeSoto Motor Corporation, Plymouth Motor Corporation, Chrysler Sales Corporation and Dodge Brothers Corporation.

Acknowledged service Nov. 7, 1938.

Holmes Baldrige.

[fol. 29] IN UNITED STATES DISTRICT COURT FOR THE NORTH-
ERN DISTRICT OF INDIANA

No. 9 Civil

UNITED STATES OF AMERICA, Petitioner,

against

CHRYSLER CORPORATION, et al., Respondents

FINAL DECREE—November 15, 1938

1. The United States of America filed its petition herein on November 7, 1938; each of the respondents appeared and [fol. 30] filed its answer to such petition, and asserted the truth of its answer and its innocence of any violation of law; the petitioner and the said respondents desire to avoid the expenses of a trial of the issues therein and the loss of time occasioned thereby; no testimony having been taken, each of the respondents consented to the entry of this decree without any findings of fact, upon condition that neither such consent nor this decree shall be considered an admission or adjudication that it has violated any statute; and the United States of America by its counsel having consented to the entry of this decree and to each and every provision thereof, and having moved the court for this injunction,

Therefore, it is ordered, adjudged and decreed as follows:

2. That the court has jurisdiction of all persons and parties hereto; and for the purposes of this decree and proceedings for the enforcement thereof, and for no other purpose, that the court has jurisdiction of the subject matter hereof and the petition states a cause of action against the respondents under the Act of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies".

3. "Respondent Finance Company" as used in this decree shall include Commercial Credit Company, a corporation organized and duly authorized to do business under the laws of the State of Delaware, Commercial Credit Company, a corporation organized and duly authorized to do business under the laws of the State of Pennsylvania, Commercial Credit Company, a corporation organized and duly authorized to do business under the laws of the State

of Iowa, Commercial Credit Company, a corporation organized and duly authorized to do business under the laws of the State of Michigan, Commercial Credit Company, a corporation organized and duly authorized to do business under the laws of the State of Minnesota, Commercial Credit Company, a corporation organized and duly authorized to do business under the laws of the State of Missouri, Commercial Credit Company, a corporation organized and duly authorized to do business under the laws of the State of Illinois, Commercial Credit Company, Inc., a corporation organized and duly authorized to do business under the laws of the State of Wisconsin, Commercial Credit Corporation, a corporation organized and duly authorized to [fol. 31] do business under the laws of the States of New Jersey, Commercial Credit Company, Inc., a corporation organized and duly authorized to do business under the laws of the State of Indiana and their officers, directors, agents and employees. "Manufacturer" as used in this decree shall include Chrysler Corporation, DeSoto Motor Corporation, Plymouth Motor Corporation, all of which are organized and duly authorized to do business under the laws of the State of Delaware, Chrysler Sales Corporation and Dodge Brothers Corporation, both of which are organized and duly authorized to do business under the laws of the State of Michigan and their officers, directors, agents and employees.

4. The respondents, their officers, directors, agents and employees, be and they are hereby enjoined from doing the acts hereby prohibited and to do the acts hereby directed.

5. The following terms, as used in this decree, shall have the following meanings:

(a) "Person" shall mean a person, firm, corporation or association.

(b) "Dealer" shall mean a person who holds a franchise from, or approved by, the Manufacturer that provides for the purchase at wholesale of new automobiles made by the Manufacturer, and who resells the automobiles at retail.

(c) "Wholesale financing" shall mean the advancing by a finance company, as hereinafter defined, of money or credit to or for the account of a dealer to cover, in whole or in part, the cost of new automobiles ordered by the dealer at wholesale.

(d) "Retail financing" shall mean the purchase or other acquisition of retail time sales paper from dealers by finance companies, as hereinafter defined.

(e) "Finance charge" shall mean the difference between the cash delivered price of an automobile and the price of that automobile when sold on an installment payment plan, including or not including (as the plan may provide) insurance for the retail purchaser.

(f) "Finance company" shall mean a person engaged chiefly in wholesale financing or retail financing, or both.

[fol. 32] (g) "Retail time sales paper" shall mean any conditional sale contract, chattel mortgage, lease, note or other instrument given to evidence or secure the obligation to pay the whole or any part of the price of automobiles sold by a dealer at retail.

(h) "A finance company" or "any finance company" shall include Respondent Finance Company.

(i) "Registered finance company" shall mean a finance company which shall be registered as provided in subparagraph (j) of paragraph 6 of this decree including Respondent Finance Company if it be a registered finance company.

(j) "Ford Motor Company" means Ford Motor Company, a corporation of the State of Delaware and its subsidiaries and successors, "General Motors Corporation" means General Motors Corporation, a corporation of the State of Delaware and its subsidiaries and successors, and "General Motors Acceptance Corporation" means General Motors Acceptance Corporation, a corporation of the State of New York and General Motors Acceptance Corporation of Indiana, Incorporated, a corporation of the State of Indiana, and their subsidiaries and successors.

6. The Manufacturer:

(a) Shall permit any finance company or other person to pay for any automobile shipped or otherwise delivered by the Manufacturer to any dealer, upon written specific or continuing authority of the dealer:

(b) So long as the Manufacturer shall continue to give or assign to Respondent Finance Company or any other finance

company, any document of title or lien in respect of such automobiles, it shall not refuse, upon written request of any other finance company, to make available or assign to it similar documents of title or lien in respect of automobiles similarly shipped or delivered to the dealer and paid for by the finance company upon substantially similar terms and conditions;

(c) So long as the Manufacturer shall continue to furnish Respondent Finance Company or any other finance company space for maintaining an office in any place of business of the Manufacturer, it shall not refuse, upon substantially [fol. 33] equivalent terms and conditions and upon written request of any other finance company that extends wholesale financing facilities to dealers operating under franchise of the Manufacturer, to furnish it space for maintaining an office in such place of business; provided that it shall not be a violation of this decree for the Manufacturer to furnish the same only to registered finance companies as defined in sub-paragraph (j) of this paragraph 6;

(d) So long as the Manufacturer shall knowingly continue to furnish to Respondent Finance Company or any other finance company the identity of or other information concerning dealers or prospective dealers, it shall not knowingly refuse to furnish corresponding information, upon substantially similar terms and conditions and upon specific or continuing request as to identity and specific but non-continuing request as to other information, to any other finance company whose territory includes the location of such dealer's or prospective dealer's place of business; provided that it shall not be a violation of this decree for the Manufacturer to furnish the same only to registered finance companies as defined in sub-paragraph (j) of this paragraph 6, or only to a finance company designated in writing to the Manufacturer by the dealer or prospective dealer;

(e) Except as provided by sub-paragraphs (j) and (k) of this paragraph 6,

(i) the Manufacturer shall not establish any practice, procedure or plan for the retail or wholesale financing of automobiles for the purpose of enabling Respondent Finance Company or any other finance company or companies to enjoy a competitive advantage in obtaining the patronage of dealers through any service, facility or privilege

extended by the Manufacturer pursuant to such practice, procedure or plan if such service, facility or privilege or a service, facility or privilege corresponding thereto, is not made available upon its written request to any other finance company upon substantially similar terms and conditions; and

(ii) so long as the Manufacturer shall continue to afford any service, facility or privilege not otherwise specifically referred to in this decree to Respondent Finance Company [fol. 34] or any other finance company or companies, it shall not refuse to afford similar or corresponding services, facilities or privileges upon substantially similar terms and conditions and upon written request to any other finance company for the purpose of giving Respondent Finance Company or any other finance company or companies a competitive advantage in obtaining the patronage of dealers; provided that it shall not be a violation of this decree for the Manufacturer to afford such service, facility or privilege only to registered finance companies as defined in sub-paragraph (j) of this paragraph 6, or only to a finance company designated in writing to the Manufacturer by the dealer or prospective dealer;

the written request shall specify in each instance the particular service, facility or privilege desired;

(f) The Manufacturer shall not give or make available or deny or threaten to deny to any dealer any service or facility, or discriminate among its dealers in any other manner, for the purpose of influencing a dealer to patronize Respondent Finance Company or any other finance company, or registered finance companies;

(g) The Manufacturer shall not enter into or further continue any contract or agreement with any dealer (1) which provides that the dealer shall patronize only Respondent Finance Company or any other finance company selected by the Manufacturer or registered finance companies; or (2) which requires the dealer to observe any plan for or rate of financing the purchase and sale of automobiles designated by the Manufacturer;

(h) The Manufacturer shall not cancel or terminate any contract, franchise or agreement with any dealer, or threaten to do so, because of failure of such dealer to patronize Respondent Finance Company, or any other finance

company, or because of the failure of the dealer to patronize registered finance companies;

(i) The Manufacturer shall not, except in each instance upon written request of the dealer or prospective dealer, arrange or agree with Respondent Finance Company or any other finance company that an agent of the Manufacturer and an agent of the finance company shall together be present with any dealer or prospective dealer for the purpose [fol. 35] of influencing the dealer to patronize Respondent Finance Company or such other finance company; provided, however, that it shall not be a violation of this decree for the Manufacturer to assist any dealer or prospective dealer, because of said dealer's or prospective dealer's financial situation or requirements, by joint conference with him and a representative of a particular finance company, to obtain special facilities or services (such term not including only the financing of the shipment or delivery of automobiles to such dealer or prospective dealer and/or only the purchase or acquisition of retail time sales paper from him in the regular course of business) from the particular finance company and, in part consideration of such special facilities or services, for such dealer or prospective dealer to arrange to do business with such finance company on an exclusive basis for a reasonable period of time as may be agreed between them;

(j) As used in this decree the word "registered" as applied to a finance company means a finance company that shall have done the following things and shall have filed a statement that meets the following requirements:

1. The statement shall be signed and acknowledged by the finance company and sworn to by an officer thereof, and shall have been filed in this proceeding and a copy thereof certified by the clerk shall have been served on the Manufacturer.

2. The finance company shall not in any manner have withdrawn the statement or rendered it ineffective.

3. The court shall not have made an order to the effect that the finance company shall cease to be a registered finance company; or, if so, the finance company shall have obtained an order reinstating it as a registered finance company, or otherwise shall have become again a registered finance company.

4. The statement shall be in the following form:

"To Chrysler Corporation (hereinafter called the 'Manufacturer'):

"(A) This statement is made pursuant to sub-paragraph (j) of paragraph 6 of a decree of the United States District Court for the Northern District of Indiana, in a cause entitled [fol. 36] titled 'United States of America vs. Chrysler Corporation et al.,' dated November 15, 1938.

"(B) The undersigned finance company, in acquiring retail time sales paper, arising from sales of automobiles, from dealers of the Manufacturer, wherever located, will conform to the following rules:

(1) If the finance company acquires retail time sales paper from a dealer of the Manufacturer on a finance plan which includes insurance to be arranged for by the finance company, the finance company shall (unless the insurance company to which the risk is submitted declines to write the risk) arrange for such insurance as the dealer represents to the finance company is to be arranged for by it and shall mail or cause to be mailed to the buyer a policy or certificate of insurance so arranged for within twenty-five days after the finance company acquires such retail time sales paper. Such policy or certificate shall recite the character of the coverage and the amount of the insurance premium;

(2) The finance company will not require or accept assignments of wages or salaries, or garnish wages or salaries to collect deficiency judgments in respect of automobiles sold for less than \$1,000 and for private and non-commercial use unless, prior to repossession, it has requested the buyer to return the automobile to it and he has not done so;

(3) The finance company will not take any deficiency judgment where the retail purchaser of an automobile, sold for private and non-commercial use, has paid at least 50% of his note or other obligation, and will not collect from any retail purchaser of an automobile, through deficiency or other judgments, any amount in excess of its actual losses and expenses upon the failure of such purchaser to pay his note or other obligation, and will pay to or credit to the account of such purchaser any surplus over the amount owing by him on his note or other obligation which the

finance company or its nominee or its affiliated or subsidiary company may realize on the purchaser's note or other obligation and the automobile or any other security therefor;

(4) The finance company will not assign or transfer any retail time sales paper owned or held by it to any other [fol. 37] person, except a dealer from whom the finance company acquired the paper on a full recourse basis rather than upon a non-recourse basis or upon the dealer's agreement to repurchase the automobile if repossessed, without limiting the rights, and creating an obligation in its assignee and his successors in interest, to proceed against the retail buyer only in the manner and to the extent that the finance company is authorized to proceed hereunder;

(5) The finance company will not make a higher charge, for granting an extension or rewriting a transaction, than the approximate pro-rata equivalent of the original finance charge, or charge more than 5 per cent of the delinquent instalments for reinstating a delinquent account or charge more than its out-of-pocket expense plus a reasonable amount for the time of its employees as collection or repossession expenses;

(6) The finance company will not require the dealer to take a chattel mortgage or other lien on property other than the automobile purchased, as additional security for the payment for such automobile sold for private and non-commercial use; and will not accept an assignment from the dealer of such a chattel mortgage or other lien;

(7) The finance company will not represent to any person that it is, in any way, connected or affiliated with the Manufacturer, or that it has been approved, recommended or endorsed by the Manufacturer, or in any way ascribe to the Manufacturer or its dealers responsibility for, or authorization of, its acts; but this shall not prevent the finance company from stating if that be the case that it is a registered finance company, and at any time when a plan adopted by the Manufacturer is in effect this shall not prevent the finance company from stating if that be the case that it is a registered finance company and is offering financing service in accordance with the plan;

(8) The finance company will not intentionally do anything injurious to the good will of the Manufacturer or to

the reputation of its products, or to the goodwill of its dealers except as may result from the assertion of any legal or contractual rights;

(9) The finance company will not without the consent of the Manufacturer disclose to any competitor of the Manufacturer [fol. 38] information which it shall have received from the Manufacturer;

(10) The finance company will disclose to the purchaser whatever information is required to be disclosed by, and will otherwise comply with, any further order of the court entered pursuant to paragraph 8 of the decree hereinbefore mentioned;

(11) The finance company will not violate any other reasonable rule hereafter from time to time established by the Manufacturer, approved by the Department of Justice of the United States and incorporated herein by the further order of the United States District Court for the Northern District of Indiana, after notice by registered mail to all registered finance companies and notice in such form as the court may determine to be reasonable to other finance companies and interested parties and an opportunity for hearing to the persons so notified."

"(C) The area within which the finance company conducts its business is: *[insert either 'the United States' or the names of specific states, counties or cities]*, and notwithstanding the designation of an area, the finance company nevertheless will comply with clauses (B) and (D) in all areas in which it may now or hereafter do business with dealers of the Manufacturer.

"(D) Until the effective date of any withdrawal of this statement by the finance company in the manner provided by paragraph 1 of sub-paragraph (k), or in the manner provided by paragraph 5 or by paragraph 6, of sub-paragraph (j), of paragraph 6 of said decree, all retail time sales paper, created after the effective date of any plan or plans or modification thereof and covering new automobiles made by the manufacturer, acquired by the finance company from the Manufacturer's dealers (whether located in the area described in Clause (C) hereof or elsewhere), shall be acquired by it in accordance with the terms of any plan or plans of financing adopted by the Manufacturer as provided by said sub-paragraph (j) and then in effect; provided:

a. The finance charges included in such retail paper may be less than the finance charges specified by such plan or plans or modification thereof, and the other terms of such paper may be more favorable to the retail purchaser than [fol. 39] the terms so specified; and b. the finance company may acquire retail time sales paper covering new automobiles made by the Manufacturer in which the retail purchaser of the automobile is required to pay a finance charge in excess of the finance charge specified in the plan so adopted or modification thereof, but only if the finance company shall promptly credit such retail purchaser on the time purchase price of the automobile with the amount of the excess. The words 'finance charge' as used in this statement shall mean the difference between the cash delivered price of an automobile and the price of that automobile when sold on an instalment payment plan, including or not including (as the plan may provide) insurance for the retail purchaser.

“(E) This statement is filed on behalf of, and shall bind, the undersigned finance company and all finance companies owned or controlled by the undersigned finance company, and all finance companies which own or control the undersigned finance company or are under common ownership or control with it.

“(F) The address of the finance company's principal office is —.

— Finance Company, by —, President.

Attest:

—, Secretary.

STATE OF —,

County of —, ss:

On this — day of —, 19—, personally appeared before me, a notary public, — to me known and known to me to be the person who executed the foregoing statement, and who by me being duly sworn acknowledged and deposed that he is — President of said Corporation; that he executed the foregoing statement on its behalf; that he executed said statement by authority of the Board of Directors of said corporation and that the seal of said corporation was thereunto affixed by like authority.

—, Notary Public.

STATE OF —,

County of —, ss:

—, being duly sworn, deposes and says that he is an officer, to wit the — of —, the finance company which [fol. 40] executed the foregoing statement, and that said statement is in all respects true.

Signed and sworn to before me this — day of —, 19—. —, Notary Public".

[Appropriate changes to be made for finance companies which are not corporations.]

5. Any registered finance company may file with the court a notice in writing of its withdrawal of its sworn statement above mentioned, and serve upon the Manufacturer a copy of said notice, certified by the Clerk of the Court, and ninety days after such service or at such later date as may be stated in the notice, the finance company shall cease to be a registered finance company and the Manufacturer shall notify its dealers that such finance company has ceased to be a registered finance company.

6. The Manufacturer shall notify each finance company, which makes written specific or continuing request therefor, by registered mail of every additional rule which is incorporated in the sworn statement as provided in sub-division (11) of clause (B) of sub-paragraph (j) of this paragraph

6. The notice shall set forth the provisions of the rule and the date, not less than thirty days after the date of mailing the notice, upon which the rule shall go into effect. Any registered finance company so notified may before that date file with the court notice in writing setting forth that it withdraws its sworn statement because it does not intend to be bound by said rule, and serve upon the Manufacturer a copy of said notice certified by the Clerk of the Court, and thereupon the finance company at once and without lapse of any time shall cease to be a registered finance company and the Manufacturer shall notify its dealers that said finance company has ceased to be a registered finance company.

7. The Petitioner, the Manufacturer or any registered finance company shall be entitled to make application to

the court, for an order herein finding and adjudging that a registered finance company has failed to comply with its sworn statement, and jurisdiction of this cause is reserved for the entry of orders upon such applications as the facts and justice may require (after such notice and hearing as the court may direct) suspending or revoking the registration of any registered company or dismissing the application. If the order shall provide that such finance company shall cease to be a registered finance company indefinitely, the finance company may, not less than six months thereafter, apply to the court for an order reinstating it as a registered finance company, and jurisdiction of this cause is reserved to grant or deny such application, or grant it upon such terms and conditions, if any, as the court may determine for the purpose of assuring farther compliance with such finance company's sworn statement. Upon the entry of an order finding that a finance company has failed to comply with its sworn statement, as aforesaid, if the Manufacturer shall have made the application for such an order, or upon service upon the Manufacturer of a copy of said order certified by the Clerk of the Court if another party shall have made such application, the Manufacturer shall notify its dealers of the entry and the terms of such order and shall treat said company as a company that is not a registered finance company or as the order of the court may require.

8. Withdrawal of its sworn statement by a registered finance company and any order suspending or revoking the registration of any registered company or dismissing the application shall be applicable to all finance companies embraced by the sworn statement under clause (E) thereof.

9. Service of all papers hereinbefore required to be made upon the Manufacturer shall be made personally upon an officer of the Manufacturer, or by registered mail to the Manufacturer, at its principal office now located in Highland Park, Detroit, Michigan.

10. Service of all papers upon a finance company pursuant to this decree shall be made personally or by registered mail addressed to it at its principal office as shown in its statement.

(k) The Manufacturer shall not, except as hereinafter provided, recommend, endorse or advertise the Respondent

Finance Company or any other finance company or companies to any dealer or to the public; provided, however, that nothing in this decree contained shall prevent the Manufacturer in good faith:

(1) From adopting from time to time a plan or plans of financing retail sales of new automobiles made by the Manufacturer or from time to time withdrawing or modifying the same;

(2) From recommending to its dealers the use of such plans;

(3) From advising its dealers that such plans are available through all registered finance companies which have indicated their readiness to do business under the plan in such dealers' area or from advising the names of such companies;

(4) From advertising to the public and recommending the use of such plans;

(5) From advertising to the public that such plans are available through all registered finance companies which have indicated their readiness to do business under the plan in the area to which such advertisement is directed or from advertising the names of such companies.

1. The Manufacturer shall notify each finance company, which makes written specific or continuing request therefor by registered mail, of every plan and modification thereof that the Manufacturer shall adopt. The notice shall set forth the provisions of the plan or modification and the date, not less than thirty days after the date of mailing the notice, upon which the plan or modification shall go into effect. Any registered finance company so notified may before that date file with the court notice in writing setting forth that it withdraws its sworn statement because it does not intend to be bound by said plan or modification, as the case may be, and serve upon the Manufacturer a copy of said notice certified by the Clerk of the Court, and thereupon the finance company at once and without lapse of any time shall cease to be a registered finance company and the Manufacturer shall notify its dealers that said finance company has ceased to be a registered finance company.

2. Nothing in this decree shall prevent the Manufacturer from obtaining such assurances as it may desire from one

or more finance companies before or after adoption of any plan or modification that it or they will make such plan or modification available for at least a specified period of time; provided, however, that the Manufacturer may not give such finance company or finance companies, as consideration for such assurances, any consideration prohibited by this decree.

[fol. 43] 3. The adoption or modification of any plan under this sub-paragraph (k) shall not preclude any aggrieved finance company or any other aggrieved person, who considers that such plan or modification constitutes an unreasonable restraint of trade or commerce in automobiles under the Sherman Anti-trust Law from applying to this court to vacate such plan, and the court reserves jurisdiction to make an order upon such application approving or vacating such plan, upon the execution of proper bond against damages for an order of vacation subsequently reversed or vacated.

(1) The Manufacturer shall not use any information obtained from any dealer, his agents, representatives, servants and employees, either directly by examination or inspection of his books or records, or through financial, operating or other statements or reports or otherwise, nor shall it require disclosure of any such information, for the purpose of influencing such dealer to patronize Respondent Finance Company or any other finance company or group of finance companies. Nothing herein contained shall apply to the disclosure or use of any information at the dealer's written request or for the purpose of assisting the dealer, at his specific written request, to obtain wholesale or retail financing or special facilities or services from Respondent Finance Company or any other finance company designated by the dealer in such written request.

7. The Respondent Finance Company:

(a) Shall not represent in any manner to any dealer that the Manufacturer requires him to patronize Respondent Finance Company, or that his failure to do so will result in the cancellation or termination by the Manufacturer of his contract, franchise or agreement, or in the loss of any advantage, service or facility furnished by the Manufacturer, or that Respondent Finance Company can obtain from the Manufacturer any facility, service or privilege which is not

available to any other finance company, except (if Respondent Finance Company is a registered finance company) such services, facilities or privileges as result from the registration of a registered finance company, under paragraph 6 of this decree;

(b) Until further order of this court pursuant to paragraph 8 hereof, shall pay to every dealer who ceases to do [fol. 44] business with it the amount of all reserves standing to the credit of such dealer, less any off-setting indebtedness of such dealer, such payment to be made not later than thirty (30) days after liquidation of all of the retail paper acquired from such dealer, and shall comply with any provisions relating thereto contained in any further decree entered pursuant to paragraph 8 of this decree;

(c) Shall not enter into any contract, agreement or understanding with any dealer, in connection with wholesale financing for which a separate charge is not made, which requires the dealer to deal with Respondent Finance Company in respect of retail financing of automobiles not financed at wholesale by Respondent Finance Company;

(d) Shall not, except upon written request of the dealer or prospective dealer, arrange or agree with the Manufacturer that an agent of the Manufacturer and an agent of Respondent Finance Company shall together be present with any dealer or prospective dealer for the purpose of influencing the dealer or prospective dealer to patronize Respondent Finance Company; provided, however, that it shall not be a violation of this decree for Respondent Finance Company by joint conference with a dealer or prospective dealer and a representative of the Manufacturer to agree to furnish to such dealer or prospective dealer, because of his financial situation or requirements, special facilities or services (such term not including only the financing of the shipment or delivery of automobiles to such dealer or prospective dealer and/or only the purchase or acquisition of retail time sales paper from him in the regular course of business) and in part consideration of such special facilities or services to arrange for the dealer or prospective dealer to do business with Respondent Finance Company on an exclusive basis for such reasonable period of time as may be agreed between them.

8. In the event that a final decree not subject to further review is entered by a court of competent jurisdiction in

any proceeding hereafter instituted by the United States against General Motors Corporation and General Motors Acceptance Corporation, granting relief to the Government against said corporations upon allegations substantially identical with the allegations in Paragraph 18 of Section III of the petition herein, then and in that event the court [fol. 45] shall have jurisdiction to enter its supplemental decree herein granting such relief, if any, against the Respondent Finance Company or any of them, with respect to the allegations of said paragraph of the petition, as justice may then require. Such proceeding shall be upon application of the United States and upon proper notice and opportunity for hearing to the respondents and the presentation of evidence (including evidence with respect to the other acts and practices of the Respondent Finance Company and the Manufacturer alleged in the petition and evidence of the acts and practices of other finance companies and the volume of business done by them) relevant in determining the legality under the Sherman Anti-trust Law of the acts and practices of the Respondent Finance Company alleged in Paragraph 18 of Section III of the petition and established before the court, considered in combination with any other acts and practices of the Respondent Finance Company and the Manufacturer alleged in the petition and established before the court, and relevant in determining what further decree, if any, is necessary in addition to this decree in order to require Respondent Finance Company thereafter to conduct its business in accordance with the Sherman Anti-trust Law in respect of the acts and practices alleged in said paragraph, reserving to each of the Respondent Finance Company the right to present all defenses in law or fact as to any of the matters tendered by the Government in such proceeding which would be open if this decree had not been entered, provided, however, that such supplemental decree shall be subject to review as fully as though entered as the final decree in an original non-jury action and shall be vacated upon motion of any party if not so reviewable.

9. The respondents shall not in combination or conspiracy do any act which this decree forbids or omit any act which this decree requires.

10. Upon complaint by the petitioner that any respondent has failed to comply with the provisions of the foregoing

sub-paragraphs (e), (f), (g) and (h) of paragraph 6, or of sub-paragraph (d) of paragraph 7 of this decree, and the defense of such respondent that the act or acts complained of were not done for the forbidden purpose or purposes, the burden shall be upon such respondent to prove that the act complained of was done for a purpose not forbidden.

[for 46] 11. The Manufacturer shall mail a copy hereof to its dealers, regional and district managers and field representatives in the continental United States and Respondent Finance Company shall mail a copy hereof to its zone, regional and branch managers in the continental United States; and said Manufacturer and Respondent Finance Company respectively shall within thirty (30) days after the entry of this decree file with this court an affidavit or affidavits showing the manner in which they severally shall have complied with this provision hereof.

12. The Respondent Finance Company shall not pay to any automobile manufacturing company and the Manufacturer shall not obtain from any finance company any money or other thing of value as a bonus or commission on account of retail time sales paper acquired by the finance company from dealers of the Manufacturer. The Manufacturer shall not make any loan to or purchase the securities of Respondent Finance Company or any other finance company, and if it shall pay any money to Respondent Finance Company or any other finance company with the purpose or effect of inducing or enabling such finance company to offer to the dealers of the Manufacturer a lower finance charge than it would offer in the absence of such payment, it shall offer in writing to make, and if such offer is accepted it shall make, payment upon substantially similar bases, terms and conditions to every other finance company offering such lower finance charge; provided, however, that nothing in this paragraph contained shall be construed to prohibit the Manufacturer from acquiring notes, bonds, commercial paper, or other evidence of indebtedness of Respondent Finance Company or any other finance company in the open market.

It is an express condition of this decree that notwithstanding the provisions of the preceding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January

1, 1941, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance [fol. 47] company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a. The Court, upon application of the respondents or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted.

12a. It is a further express condition of this decree that:

(1) If the proceeding now pending in this court against General Motors Corporation instituted by the filing of an indictment by the Grand Jury on May 27, 1938, No. 1039, or any further proceeding initiated by reindictment of General Motors Corporation for the same alleged acts, is finally terminated in any manner or with any result except by a judgment of conviction against General Motors Corporation and General Motors Acceptance Corporation therein, then and in that event, every provision of this decree except those contained in this sub-paragraph (1) of this paragraph 12a of this decree, shall forthwith become inoperative and be suspended, until such time as restraints and requirements in terms substantially identical with those imposed herein, shall be imposed upon General Motors Corporation and General Motors Acceptance Corporation and their subsidiaries either (a) by consent decree, or (b) by final decree of a court of competent jurisdiction not subject to further review, or (c) by decree of such court which although subject to further review continues effective. The court reserves jurisdiction upon application of any party to enter orders at the foot of this decree in accordance with the provisions of this paragraph.

(2) A general verdict of guilty returned against General Motors Corporation in said proceeding, followed by the entry of judgment thereon, shall be deemed to be a determination of the illegality of any agreement, act or prac-

tice of General Motors Corporation which is held by the trial court, in its instructions to the jury, to constitute a proper basis for the return of a general verdict of guilty. A special verdict of guilty returned against General Motors Corporation in said proceeding, followed by the entry of judgment thereon, shall be deemed to constitute a determination of the illegality of any agreement, act or [fol. 48] practice of General Motors Corporation which is the subject of such special verdict of guilty. A plea of guilty or nolo contendere by General Motors Corporation, followed by the entry of judgment of conviction thereon, shall be deemed to be a determination of the illegality of any agreement, act or practice which is the subject matter of such plea. The determination, in the manner provided in this clause, of the illegality of any agreement, act or practice of General Motors Corporation shall (for the purposes of clause (3) of this paragraph) be considered as the equivalent of a decree restraining the performance by General Motors Corporation of such agreement, act or practice, unless or until such judgment is reversed, or unless such determination is based, in whole or in part, (a) upon the ownership by General Motors Corporation of General Motors Acceptance Corporation, or (b) upon the performance by General Motors Corporation of such agreement, act or practice in combination with some other agreement, act or practice with which the respondents are not charged in the indictment heretofore filed against them by the Grand Jury on May 27, 1938, No. 1040;

(3) After the entry of a consent decree against General Motors Corporation, or after the entry of a litigated decree, not subject to further review, against General Motors Corporation by a court of the United States of competent jurisdiction, or after the entry of a judgment of conviction against General Motors Corporation in the proceeding hereinbefore referred to, or after January 1, 1940 (whichever date is earliest), the court upon application of any respondent from time to time will enter orders:

(i) suspending each of the restraints and requirements contained in sub-paragraphs (d) to (f) and (h) to (l), inclusive, of paragraph 6 of this decree to the extent that it is not then imposed, and until it shall be imposed, in substantially identical terms, upon General Motors Corporation and its subsidiaries, and suspending each of the re-

straints and requirements contained in sub-paragraphs (a), (c) and (d) of Paragraph 7 of this decree to the extent that it is not imposed and until it shall be imposed in substantially identical terms, upon General Motors Acceptance Corporation and its subsidiaries, either (w) by consent decree, or (x) by final decree of a court of competent jurisdiction not subject to further review, or (y) by decree of [fol. 49] such court which, although subject to farther review, continues effective or (z) by the equivalent of such a decree as defined in clause (2) of this paragraph; provided, however, that if the provisions of a consent or litigated decree against General Motors Corporation and its subsidiaries corresponding to sub-paragraphs (j) and (k) of paragraph 6 of this decree are different from said sub-paragraphs of this decree, then upon application of the respondents any provision or provisions of said sub-paragraphs will be modified so as to conform to the corresponding provisions of such General Motors Corporation decree;

(ii) suspending each of the restraints and requirements contained in the remaining sub-paragraphs (a), (b), (c) and (g) of paragraph 6 to the extent that it is not then imposed, and until it shall be imposed, upon General Motors Corporation and its subsidiaries in any manner specified in the foregoing sub-clause (i) of this clause (3), if any respondent shall show to the satisfaction of the court that General Motors Corporation or its subsidiaries is performing any agreement, act or practice prohibited to the Manufacturer by said remaining sub-paragraphs, and suspending each of the restraints and requirements contained in sub-paragraph (b) of Paragraph 7 of this decree to the extent that it is not imposed, and until it shall be imposed, upon General Motors Acceptance Corporation and its subsidiaries in any said manner, if any respondent shall show to the satisfaction of the court that General Motors Acceptance Corporation is performing any agreement, act or practice prohibited to Respondent Finance Company by said sub-paragraph (b) of Paragraph 7;

(iii) suspending the restraints of sub-paragraph (d) of paragraph 7 of this decree as to Respondent Finance Company, in the event that the restraints of sub-paragraph (i) of paragraph 6 of this decree are suspended as to the Manufacturer;

(4) The right of the respondents or any of them to make any application for the suspension of any provision of this decree in accordance with the provisions of this paragraph 12a and to obtain such relief is hereby expressly granted.

In the event that at any time prior to the date when General Motors Corporation has permanently divested itself of all ownership and control of and interest in General [fol. 50] Motors Acceptance Corporation, General Motors Acceptance Corporation shall make available to dealers of General Motors Corporation in any area a finance charge, on all or any class of automobiles sold by dealers of General Motors Corporation, less than the finance charge then generally available to dealers of the Manufacturer within such area, nothing in this decree shall prevent the Manufacturer from making, and the Manufacturer may make, adjustments, allowances or payments to or with all of its dealers in such area who agree to reduce to an amount approved by the Manufacturer (but not less than that then made available by General Motors Acceptance Corporation) the finance charges which such dealers of the Manufacturer in such area receive from any class of retail purchasers of automobiles, provided that such adjustments, allowances or payments shall not discriminate among such dealers in such area.

13. This decree shall not be pleaded in bar by the respondents in any action under the Anti-Trust Laws instituted by the petitioner against them or any of them in this court or in a court in any other judicial district as to matters arising after the entry of this decree; provided, however, that this paragraph shall not apply to matters which are covered by this decree or which form a part of the cause of action herein or which are a continuance or repetition of acts or practices in which the respondents now engage which form a part of the cause of action herein.

14. Jurisdiction of this cause is retained for the purpose of enabling any of the parties to this decree to make application to the court at any time for such further orders and directions as may be necessary or appropriate in relation to the construction of or carrying out of this decree, for the modification thereof (including, without limitation, any modification upon application of the respondents or any of them required in order to conform this decree to any Act

of Congress enacted after the date of entry of this decree), for the enforcement of compliance therewith, the punishment of violations thereof, and the carrying out of the provisions of sub-paragraphs (j) and (k) of paragraph 6 hereof, and the October, 1938, Term of this court is hereby extended indefinitely for such purposes.

15. It is hereby further provided that if it shall appear to the court upon application of any respondent that, (A) [fol. 51] in any twelve (12) months' period after the date of entry of this decree, any present or future competitor of the Manufacturer other than General Motors Corporation or Ford Motor Company shall have sold in the United States, or any State thereof, a quantity of automobiles that shall equal or exceed 25% of the automobiles sold by the Manufacturer in the United States or said State in said period, and (B) that such competitor is doing or engaging in any of the acts, practices, procedures or things then prohibited hereunder or is failing to do or engage in any act, practice, procedure or thing required hereunder, and (C) that the doing or engaging in of said acts, practices, procedures or things, or the omission of them, as the case may be, by such competitor has resulted or threatens to result in placing the Manufacturer at a competitive disadvantage in the sale of automobiles as against such competitor, and (D) that the petitioner herein has not obtained or is not proceeding with due diligence by civil or criminal proceedings to obtain an adjudication of the illegality of such acts, practices, procedures or things so performed or engaged in, or omitted to be performed or engaged in, as the case may be, under the Anti-Trust Laws, the court upon application of the respondents or any of them will enter its further order and decree providing that the provisions of this decree not so imposed upon or sought to be adjudicated against such competitor shall be inoperative and that they shall have no future force or effect in the United States or said State, as the case may be, and the right of the respondents to make such applications and to obtain such relief is hereby expressly granted.

It is hereby further provided that if it shall appear to the court upon application of any respondent that (A) in any twelve (12) months' period after the date of entry of this decree any present or future competitor of Respondent Finance Company other than General Motors Acceptance

Corporation or Commercial Investment Trust Corporation or Universal Credit Company shall have financed the retail sale of a quantity of automobiles in the United States or any State thereof that shall equal or exceed 25% of the automobiles the sale of which was financed by Respondent Finance Company in the United States or said State in said period, and (B) that such competitor is doing or engaging in any of the acts, practices, procedures or things then prohibited hereunder or is failing to do or engage in any [fol. 52] act, practice, procedure or thing required hereunder, and (C) that the doing or engaging in of said acts, practices, procedures or things, or the omission of them, as the case may be, by such competitor has resulted or threatens to result in placing the Respondent Finance Company at a competitive disadvantage in financing the sale of automobiles as against such competitor, and (D) that the petitioner herein has not obtained or is not proceeding with due diligence by civil or criminal proceedings to obtain an adjudication of the illegality of such acts, practices, procedures or things so performed or engaged in, or omitted to be performed or engaged in, as the case may be, under the Anti-Trust Laws, the court upon application of the respondents or any of them will enter its further order and decree providing that the provisions of this decree not so imposed upon or sought to be adjudicated against such competitor shall be inoperative and that they shall have no future force or effect in the United States or said State, as the case may be, and the right of the respondents to make such applications and to obtain such relief is hereby expressly granted.

16. Nothing in this decree shall limit the control by the Manufacturer of a subsidiary or limit the control by Respondent Finance Company of any subsidiary or affiliated company.

17. Whenever obligations are imposed upon the respondents by the laws or regulations of any state with which the respondents by law must comply in order to do business in such state, the court upon application of the respondents or any of them will from time to time enter orders relieving the respondents from compliance with any requirements of this decree in conflict with such laws or regulations and the right of the respondents to make such applications and to obtain such relief is expressly granted.

18. After four years after the date of the entry of this decree any respondent may apply to the court to vacate this decree or any supplemental decree entered pursuant to paragraph 8 hereof or to vacate or modify any provision thereof on the ground that the commission or omission of any of the agreements, acts or practices herein prohibited or required, under the economic or competitive conditions existing at the time of such application, does not constitute an unreasonable restraint of trade or commerce [fol. 53] among the states in automobiles within the meaning of the Sherman Anti-trust Law as amended to the date of such application, regardless of whether or not such economic or competitive conditions are new or unforeseen. Jurisdiction of this cause is retained for the purpose of granting or denying such applications as justice may require and the October, 1938, Term of this court is hereby extended indefinitely for such purpose and the right of the respondents to make such applications and to obtain such relief is expressly granted. The provisions of this paragraph are in addition to, and not in limitation of, the provisions of any other paragraph of this decree.

19. This decree shall have no effect with respect to respondents' acts and operations without the continental United States or to their acts and operations within the continental United States relating, exclusively, to acts and operations without the continental United States.

20. This decree shall go into effect one hundred and twenty days after the date of entry hereof, except as to the provisions of paragraphs 8, 11, and 12 hereof, which said paragraphs shall take effect as therein provided.

Thos. W. Slick, District Judge.

Dated: November 15, 1938.

[fol. 54] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION FOR MODIFICATION OF FINAL DECREE--Filed December 17, 1940

The United States of America, plaintiff in the above entitled action, by James R. Fleming, United States Attorney.

for the Northern District of Indiana, acting under the direction of the Attorney General, represents and moves as follows:

That on November 15, 1938, a final decree was entered by consent in this case containing a section numbered 12, to which reference is hereby made; that the terms of said section 12, among other things, enjoined the respondent finance company from paying to any automobile manufacturing company, and enjoined the respondent manufacturer from obtaining from any finance company, any commission or return arising from the handling of time paper acquired by the finance company from dealers of the manufacturer, [fol. 55] and likewise enjoined the manufacturer from making loans to, or, subject to limitations, purchasing the securities of, the respondent finance company or any other finance company, and otherwise affected the relationship between the manufacturer and the finance companies.

Section 12 also provided in substance that if an effective final order or decree by the terms of which General Motors Corporation should be required to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein should not have been entered on or before January 1, 1941, then nothing in said decree should preclude the manufacturer from acquiring and retaining ownership or control of or an interest in any finance company.

The plaintiff represents that it has expeditiously taken and pursued all courses necessary and proper for procuring such order and decree against General Motors Corporation; that at the time when the decree in this case was entered the length of time which would be required to procure said order and decree against General Motors Corporation was by mistake of the parties underestimated; that the entering of such order and decree against General Motors Corporation was and is dependent on the proving of certain involved facts and on the establishing of certain numerous disputed principles of law; that it was then believed by the parties to said consent decree that the case pertaining to General Motors Corporation could be more promptly disposed of than subsequent conditions have indicated and that the aforesaid final order or decree could be procured on or before January 1, 1941; that the issues which would be involved in a case resulting in such final order or decree have been to a great extent, and are, involved in a certain

criminal proceeding, to wit, United States of America v. General Motors Corporation, et al., Criminal Case No. 1039, arising on an indictment returned in this Court on the 27th day of May, 1938; that the parties hereto, at the time of the entering of the consent decree, anticipated that such criminal case would be disposed of without extensive and lengthy litigation, and that by its results the issues in said civil suit would be substantially effected and settled; that said criminal action unexpectedly developed many preliminary hearings and interlocutory matters, and as a result its final disposition has not yet been reached; that after innumerable pleas, motions and hearings and a long trial [fol. 56] to a jury, a verdict of guilty against General Motors Corporation, General Motors Acceptance Corporation and other defendants has been returned and sentence thereon was imposed on November 17, 1939; that judgment has been entered thereon; that an appeal from the aforesaid judgment is now pending, and that the issues of law therein raised are the same in many particulars as the issues of law which will be involved at the trial of the aforesaid civil suit which aims at requiring General Motors Corporation to divest itself of ownership and control of General Motors Acceptance Corporation; that the plaintiff on, to wit, the 4th day of October, 1940, duly filed complaint in the District Court of the United States for the Northern District of Illinois, Eastern Division, against said General Motors Corporation and General Motors Acceptance Corporation, whereby it seeks the remedy referred to in said section 12, to wit, that General Motors Corporation shall divest itself of all ownership and control of General Motors Acceptance Corporation and all interest therein; that the aforesaid case is entitled United States of America, plaintiff, v. General Motors Corporation and General Motors Acceptance Corporation, defendants, Civil Action No. 2177, in said Court; that the aforesaid criminal case now pending on appeal, and the aforesaid civil action now pending in the said Northern District of Illinois, Eastern Division, involve to a great extent the same facts and an adjudication in the former will constitute res adjudicata and will be binding on the defendants in the trial of the latter; that the settling of the issues of law and fact in the appealed case will simplify and shorten the trial in the civil suit; that should the plaintiff have proceeded in the trial of the civil

suit before the said criminal suit was disposed of, the trial of said civil suit would require the consummation of much time in establishing facts which under the principle of res adjudicata will be promptly and briefly proved after the final adjudication of the criminal case; that to proceed with the trial of the civil suit before the criminal action is disposed of would needlessly greatly lengthen the time of the Court required for hearing of the aforesaid case, would involve great additional and unnecessary expense to all parties, would interfere with the efficiency in presenting the appeal in the criminal case on the one hand and the trial of the civil case on the other, and would result in a needless retrial of the same issues of law and facts; [fol. 57] that the aforesaid criminal appeal is now pending in the United States Circuit Court of Appeals for the Seventh Circuit, and that the aforesaid appeal should be disposed of within a reasonably short time; that the United States has proceeded with diligence in the instituting and prosecuting of the aforesaid civil case and will continue so to proceed; that a decision of the issues in that case will establish a precedent applicable to and controlling on the issues mentioned in said section 12; and that on account of the complication of the various proceedings herein described the aforesaid civil case cannot be disposed of on or before January 1, 1941, and before the aforesaid case can be disposed of and final order or decree therein entered, at least an additional year will elapse.

The plaintiff further represents that this Court has, by section numbered 18 of the aforesaid consent decree in this case, retained jurisdiction for the purpose of granting or denying such application for modification of said decree as justice may require.

And the plaintiff therefore moves that the aforesaid decree as contained in said section 12 be modified in such manner that the words in the second paragraph of said section 12, to wit, "on or before January 1, 1941", be modified and considered as if they had been written as follows: "on or before January 1, 1942"; and that at the close of the said paragraph in which the aforesaid words occur the following sentence be inserted: "The modification of this decree shall not preclude the plaintiff from seeking a further extension of the time within which the aforesaid decree may be entered"; with the result that said decree

shall be modified in such manner that the said part of said section 12 shall read as follows:

It is an express condition of this decree that notwithstanding the provisions of the preceding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1942, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or [fol. 58] from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a. The Court, upon application of the respondents or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted. The modification of this decree shall not preclude the plaintiff from seeking a further extension of the time within which the aforesaid decree may be entered.

(S.) James R. Fleming, United States Attorney for the Northern District of Indiana.

Dated — —, —.

AFFIDAVIT IN SUPPORT OF MOTION FOR MODIFICATION OF FINAL DECREE

I, Edmond J. Ford, being duly sworn, do hereby make oath and depose as follows:

I have read the attached Motion for Modification of Final Decree in the above entitled case and am familiar with the facts therein set forth and the circumstances under which the aforesaid motion is filed. I hereby make oath that the statements therein set forth are true. The sources of my information are original documents and facts learned in my handling of the matters referred to in the aforesaid motion

as Special Assistant to the Attorney General of the United States.

(S.) Edmond J. Ford, Special Assistant to the Attorney General.

UNITED STATES OF AMERICA,
District of Columbia, ss:

December 11, 1940.

Personally appeared before me, Edmond J. Ford, to me known, and signed the foregoing affidavit in my presence, and being duly sworn did make oath to the truth of the statement aforesaid signed by him.

Dorothy Heale, Notary Public. (Seal.)

My Commission expires Oct. 2, 1944.

[fol. 59] IN UNITED STATES DISTRICT COURT,

[Title omitted]

ANSWER OF CHRYSLER CORPORATION, DeSOTO MOTORS CORPORATION, PLYMOUTH MOTOR CORPORATION, DODGE BROTHERS CORPORATION, AND CHRYSLER SALES CORPORATION, TO MOTION FOR MODIFICATION OF FINAL DECREE.—Filed December 21, 1940

The defendants, Chrysler Corporation, DeSoto Motors Corporation, Plymouth Motor Corporation, Dodge Brothers Corporation, and Chrysler Sales Corporation, by S. J. Crumacker and Larkin, Rathbone & Perry, their attorneys, answer the Motion for Modification of Final Decree as follows:

(1) Defendants deny that plaintiff "has expeditiously taken and pursued all courses necessary and proper" for procuring an order and decree against General Motors Corporation requiring it to divest itself of all ownership and control of General Motors Acceptance Corporation and of interest therein, or that "the United States has proceeded with diligence in the instituting and prosecuting of the civil case" against General Motors Corporation or "will continue so to proceed," or that "the issues which would be involved in a case resulting in such final order or

decree have been to, a great extent, and are, involved in Criminal Case No. 1039 in this Court," or that "said criminal action unexpectedly developed many preliminary hearings and interlocutory matters," or that there were "innumerable pleas, motions, and hearings" in said criminal proceedings or any unusually large number of such pleas, motions, or hearings, or that the issues will be disposed of in whole or in part by the said criminal proceedings, as alleged in said motion. On the contrary, said motion shows upon its face that plaintiff has not expeditiously taken or pursued all necessary and proper steps since, among other things, civil proceedings against General Motors Corporation were not even instituted until October 4, 1940, nearly two years after the consent decree of November 15, 1938, (thus allowing itself less than three months to complete an important and contested case), had been entered and since plaintiff has chosen to rely upon criminal proceedings which are not even alleged to be determinative of all the issues. These defendants alleged that [fol. 60] plaintiff has been dilatory in prosecuting to a conclusion either the said criminal or civil proceedings.

(2) Defendants deny that "at the time when the decree in this case was entered the length of time which would be required to procure said order and decree against General Motors Corporation was by mistake of the parties underestimated," or "that it was then believed by the parties . . . that the case pertaining to General Motors Corporation could be more promptly disposed of than subsequent conditions have indicated," or "that the aforesaid final order or decree could be procured on or before January 1, 1941," or "that the parties hereto, at the time of the entering of the consent decree, anticipated that (the) criminal case would be disposed of without extensive and lengthy litigation," or "that by its results the issues in said civil suit would be substantially effected and settled" or "simplified and shortened," or "that said criminal action unexpectedly developed many preliminary hearings and interlocutory matters," as alleged in said motion. On the contrary, said motion shows upon its face, and upon the face of the decree, that no condition of mistake, surprise, inadvertence, or excusable neglect is sought to be corrected. These defendants allege that the parties discussed at length the period within which the plaintiff should procure an

order or decree, that the possibilities of delay were canvassed in detail and that both parties gave their consent to the consent decree with full knowledge and without error. Edmond J. Ford, upon whose affidavit the plaintiff's motion is made, was not present at the conferences or negotiations at which the parties determined the form of the consent decree entered herein.

(3) Defendants allege that said motion is not timely. On the contrary, it is clear upon the face of the motion that plaintiff, long aware of the facts, such as they are, which it asserts, has made its motion more than six months after the entry of the decree and at the last practicable moment before the expiration date of the provision of the decree sought to be extended.

(4) Upon the face of the motion, and upon the records of this Court in this cause, defendants allege that the intent of the parties and the language of the decree are clear and in accord, without inadvertence and of no uncertain intentment; that the requisites of mistake, inadvertence, surprise, [fol. 61] or excusable neglect are not alleged and, on the contrary, are negatived on the face of the record; and that diligence on the part of plaintiff is not only not material but is conclusively negatived on the face of the record.

Wherefore, defendants pray:

(1) That said motion be dismissed forthwith; or

(2) That, if said motion be not dismissed, plaintiff be required to plead or elect with particularity (a) whether it relies upon mistake, surprise, inadvertence, or excusable neglect (if so, setting forth with certainty the facts upon which such claim is made) or (b) whether it relies upon changed basic conditions of fact or law (if so, setting forth with particularity such changed conditions); and that defendants, thereafter, be given sufficient notice and opportunity to prepare its response and defense; or

(3) That, if said motion be not dismissed and if plaintiff is not required to plead further, the motion now filed herein be set down for hearing for the taking of proof on the merits, upon such terms and conditions as will assure defendants due notice of the issues and adequate opportunity to prepare its response or defense thereto.

This motion is made upon all the records of this Court in this cause.

There is filed herewith a brief memorandum of points and authorities in support hereof.

Dated: December 21, 1940.

Parker, Crabill, Crumpacker, May, Carlisle & Beamer, (Sgd.) G. J. Crumpacker, Office & Post-Office Address: J. M. S. Building, South Bend, Indiana. (Sgd.) Larkin, Rathbone & Perry; (Sgd.) Nicholas Kelley, Office & Post-Office Address: 70 Broadway, New York, N. Y., Attorneys for Defendants Chrysler Corporation, DeSoto Motors Corporation, Plymouth Motor Corporation, Dodge Brothers Corporation, and Chrysler Sales Corporation.

AFFIDAVIT OF WILLIAM STANLEY

STATE OF INDIANA,

St. Joseph County, ss:

William Stanley, being duly sworn, says: That he is an attorney and was at the time of the negotiations and entry [fols. 62-116] herein of the Final Decree one of the attorneys for the above-named defendants, Chrysler Corporation, DeSoto Motors Corporation, Plymouth Motor Corporation, Dodge Brothers Corporation and Chrysler Sales Corporation; that he was present at substantially all of the conferences and negotiations at which the parties agreed upon the form of the Final Decree entered herein on the consent of the parties; that he has read and knows the contents of the foregoing answer to the Complainant's Motion for Modification of Final Decree therein; that said answer is true of his own knowledge.

(Signed) William Stanley.

Sworn to before me this 21st day of December, 1940.

(Signed) Meelia M. Neis, Notary Public. (Seal.)

N. Y. Com. expires Sept. 30, 1944.

[fol. 117] Mr. Kelley: I don't know what to say, your Honor, but we just thoroughly object to it.

The Court: Well, I am simply extending the time for one year from January 1st, 1941 to January 1st, 1942. That's all I am doing.

Mr. Kelley: Well, we think that is a very material change.

The Court: I know you do, but I am asking you now if this order meets with your approval—if you have any objection to the provisions of the order except the fundamental objection that you have to entering any order of that kind?

Mr. Ford: Objection to the form.

The Court: Yes, the form of it.

Mr. Crumpacker: The form is the same as the other one except the change of date.

Mr. Ford: Yes.

Mr. Crumpacker: No.

The Court: All right then, I will sign it.

Reporter's Certificate to foregoing transcript omitted in printing.

IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF INDIANA, SOUTH BEND DIVISION

Civil No. 9

UNITED STATES OF AMERICA, Complainant,

v.

CHRYSLER CORPORATION, et al.; Defendants

FINAL DECREE—IN MODIFICATION—December 21, 1940

This matter came on to be heard by the Court on a motion of the United States for modification of the final decree, and the Court having heard argument of counsel and having considered the matter, and it having appeared to the Court that the allowance of such motion is just and equitable.

Now, Therefore, It Is Ordered, Adjudicated And Decreed that the aforesaid final decree shall be and is hereby modified [fols. 118-137] so that the second paragraph of section 12 thereof shall read as follows:

It is an express condition of this decree that notwithstanding the provisions of the preceding paragraph of this

paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1942, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a. The Court, upon application of the respondents or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted.

And It Is Further Ordered, Adjudicated And Decreed that except as thus modified the decree as previously entered shall stand in full force and effect.

By the Court:

Dated: December 21, 1940.

Thos. W. Slick, Judge.

[fols. 138-140] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF MOTION AND HEARING—Filed December 17, 1941

To: William Stanley, Esq., % Cummings and Stanley, 1626 K Street, N. W., Washington, D. C., Attorney for Chrysler Corporation and Duane R. Dills, Esq., 100 East 42nd Street, New York, N. Y., Attorney for Commercial Credit Company and Nicholas Kelley, % Larkin, Rathbone & Perry, 70 Broadway, New York, Attorney for Chrysler Corporation.

Please take notice that the undersigned will present its motion for modification of Final Decree and Final Decree as Modified, heretofore entered in the above entitled action, copy of which motion is attached hereto, for hearing before Honorable Thomas W. Slick, Judge of the United States

District Court for the Northern District of Indiana in the United States District Court at Hammond, Indiana on the 22nd day of December, 1941 at 2:00 o'clock in the afternoon of that date or as soon thereafter as counsel can be heard, pursuant to a setting of said motion for hearing by order of this court, a certified copy thereof being attached to this notice.

United States of America, by Alexander M. Campbell, United States Attorney.

[fols. 141-144] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER FOR HEARING—December 17, 1941

The plaintiff, United States of America, in the above entitled cause having filed its motion for modification of final decree and final decree as modified herein and having applied for a hearing on said motion for December 22, 1941,

The Court now, pursuant to the provisions of Section 6(d) of the Rules of Civil Procedure, for the causes shown in said application sets said hearing of said motion for modification of final decree for Monday, December 22, 1941 at two 2 P. M. in the United States District Court Room located at Hammond, Indiana, and further

Orders that notice of said hearing be immediately mailed by the plaintiff to counsel for the defendant.

Thos. W. Slick, Judge of the U. S. District Court,
Northern District of Indiana.

[fol. 145] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION FOR MODIFICATION OF THE FINAL DECREE AND OF THE
FINAL DECREE AS MODIFIED—Filed December 22, 1941.

The United States of America, plaintiff in the above entitled action, by Alexander M. Campbell, United States Attorney for the Northern District of Indiana, and Edmond J. Ford, Special Assistant to the Attorney General of the

United States, both acting under the direction of the Attorney General, represent and move as follows:

On November 15, 1938, a final decree was entered by consent in this case. The first paragraph of paragraph 12 of this decree enjoined the respondent manufacturer from making loans to, and, subject to certain limitations, from purchasing the securities of, the respondent finance company or any other finance company. The second paragraph of paragraph 12 provided that if an effective final order or decree should not have been entered by January 1, 1941, requiring General Motors Corporation to divest itself of all ownership and control of General Motors Acceptance Corporation, then nothing in the decree should preclude the manufacturer from acquiring and retaining ownership of, control over, or an interest in, any finance company.

On December 21, 1940, this Court, after a hearing, entered an order modifying the second paragraph of paragraph 12 by changing the date therein set forth with respect to entry of an effective final order or decree against General Motors Corporation, from January 1, 1941, to January 1, 1942.

[fol. 146] The consent decree contains numerous provisions the effect of which is that, while the various prohibitions of the decree are to be presently effective, their ultimately binding effect is to be dependent upon the outcome of certain proceedings by the plaintiff under the antitrust laws against General Motors Corporation and its subsidiary finance company, General Motors Acceptance Corporation. The consent decree was entered without submitting the issues raised by the proceeding against respondents to the test of litigation. The decree provides, in substance, that the plaintiff's litigation against General Motors Corporation shall be substituted for such test and that the prohibitions of the decree shall later be adjusted to accord with the adjudications made and the results achieved in the proceedings against General Motors Corporation.

The primary purpose of the provisions of the decree relating to affiliation was to have the right of the plaintiff to prohibit affiliation between an automobile manufacturer and a finance company, under the circumstances set forth in the complaint upon which the consent decree is based, determined by the outcome of proceedings by the plaintiff to terminate the existing affiliation between General Motors Corporation and General Motors Acceptance Corporation. A subsidiary purpose was to protect respondents against

undue delay by the plaintiff in prosecuting such proceedings by providing a specified date for bringing them to a conclusion. Circumstances arising since entry of the decree, not attributable to undue delay or laches by the plaintiff, have prevented bringing these proceedings to a conclusion by the date specified in paragraph 12, or by the date specified in paragraph 12 as modified by order of this Court. The essential purposes of the decree would be defeated if, under these circumstances, the prohibition against affiliation were allowed to lapse prior to final determination of the plaintiff's proceeding to end the affiliation between General Motors Corporation and General Motors Acceptance Corporation.

[fol. 147] The plaintiff represents that it has proceeded with due diligence to procure a decree requiring General Motors Corporation to divest itself of ownership and control of General Motors Acceptance Corporation; that the entry of such a decree is dependent upon proving certain involved facts and establishing numerous disputed principles of law; that the issues involved in a proceeding to obtain such a decree have been to a great extent involved in a criminal proceeding instituted in this Court by an indictment returned on May 27, 1938, to wit, *United States of America v. General Motors Corporation*, Criminal Case No. 4039; that the issues in such civil proceeding would be substantially affected and settled by the final disposition of said criminal proceeding; that after numerous preliminary pleas, motions and hearings and a long jury trial verdicts of guilty were returned against General Motors Corporation and General Motors Acceptance Corporation and judgments of conviction were entered against them on November 17, 1939; that after an appeal by the convicted defendants to the Circuit Court of Appeals for the Seventh Circuit that court on May 1, 1941, affirmed the convictions and subsequently denied a petition for rehearing; that the defendants thereupon filed a petition for a writ of certiorari in the Supreme Court of the United States; that the Supreme Court denied said petition on October 13, 1941, and denied a petition for rehearing on November 10, 1941.

The plaintiff on October 4, 1940, filed a proceeding (Civil Action No. 2177) in the District Court of the United States for the Northern District of Illinois, Eastern Division, against General Motors Corporation and General Motors Acceptance Corporation to compel General Motors Corpora-

tion to divest itself of all ownership and control of General Motors Acceptance Corporation; that many important issues [fol. 148] in this civil action will be rendered *res adjudicata* by the final determination of the criminal proceeding against the same defendants; that such final determination will simplify and shorten the trial in the civil suit; that to have proceeded with the trial of the civil suit before the criminal action was finally disposed of would have greatly lengthened the time of trial, would have involved great additional and unnecessary expense to all parties, and would have resulted in a needless retrial of many of the same issues of law and fact.

The plaintiff further represents that it has attempted to expedite the trial of the civil case against General Motors now pending in the Northern District of Illinois, Eastern Division, but that the court in that District on July 15, 1941, upon motion of the defendants and over the objection of the Government, granted a continuance to the defendants to run until further order of the court. This motion was granted primarily because the court was of the opinion that final adjudication of the criminal case against General Motors Corporation would greatly simplify trial of the civil proceeding. On December 2, 1941, the Government presented a motion asking the court to set an early date for the filing of all preliminary pleadings and motions and a date for disposing of the same, so that the case would be ready for trial on the issues. The defendants at the same time filed a motion for further delay and the court, after a hearing, continued the case until January 15, 1942, and held in abeyance the Government's motion.

By paragraph 14 of the consent decree in this case, this Court retained jurisdiction of the cause for the purpose of enabling any party to apply to the court at any time for modification of the decree and, aside from this provision, the Court inherently has the right to modify a decree, whether entered by consent or otherwise, as the ends of justice may require.

[fol. 149] The plaintiff avers that it will prosecute with diligence the proceeding against General Motors Corporation now pending in the Northern District of Illinois but that the cause cannot be brought to a final conclusion by January 1, 1942.

The plaintiff therefore moves that the second paragraph of paragraph 12 of the consent decree in this case, as modi-

fied by this Court, be again modified in such manner that the words of said paragraph, to wit, "on or before January 1, 1942", be modified to read "on or before January 1, 1943", with the result that said decree shall be so modified that the second paragraph of paragraph 12 shall read as follows:

It is an express condition of this decree that notwithstanding the provisions of the preceding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1943, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then, and in that event, nothing in this decree shall preclude the manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a. The Court, upon application of the respondents or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted.

Alexander M. Campbell, United States Attorney
for the Northern District of Indiana; Edmond J.
Ford, Special Assistant to the Attorney General,
Attorneys for the Plaintiff.

[fols. 150-151] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT IN SUPPORT OF MOTION FOR MODIFICATION OF FINAL
DECREE—Filed December 22, 1941

I, Edmond J. Ford, being duly sworn, do hereby make
oath and depose as follows:

I have read the attached Motion for Modification of the
Final Decree and of the Final Decree as Modified in the

above entitled case and am familiar with the facts therein set forth and the circumstances under which the aforesaid motion is filed. I hereby make oath that the statements therein set forth are true. The sources of my information are original documents of facts learned in my handling of the matters referred to in the aforesaid motion as Special Assistant to the Attorney General of the United States.

(Signed) Edmond J. Ford, Special Assistant to the Attorney General.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Personally appeared before me, Edmond J. Ford, to me known, and signed the foregoing affidavit in my presence, and being duly sworn did make oath to the truth of the statement aforesaid signed by him.

December 11, 1940.

(Signed) Dorothy J. Heale, Notary Public. My Commission Expires October 2, 1944.

[fol 152] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF CHRYSLER CORPORATION, DeSOTO MOTORS CORPORATION, PLYMOUTH MOTOR CORPORATION, DODGE BROTHERS CORPORATION AND CHRYSLER SALES CORPORATION TO MOTION FOR MODIFICATION OF THE FINAL DECREE AND OF THE FINAL DECREE AS MODIFIED—Filed December 22, 1941

The defendants Chrysler Corporation, DeSoto Motors Corporation, Plymouth Motor Corporation, Dodge Brothers Corporation and Chrysler Sales Corporation, by S. J. Crum-packer and Larkin, Rathbone & Perry, their attorneys, answer the Motion for Modification of the Final Decree and of the Final Decree as Modified, as follows:

I

1. The plaintiff fails to state in its motion a claim against these defendants upon which the relief it seeks can be granted.

II

2. This Court is without jurisdiction to grant the plaintiff's Motion for Modification of the Final Decree and of the Final Decree as Modified. Upon perfection of the appeal [fol. 153] from the Decree of this Court, as modified by its Order of December 21, 1940, all jurisdiction of this cause was transferred to the Supreme Court of the United States. Until mandate issues from the Supreme Court of the United States, the appeal is there pending and this Court is without power to modify the decree which is before the Supreme Court.

III

3. Defendants admit that on November 15, 1938, this Court entered a Final Decree upon the consent of the parties, without any testimony having been taken and without any findings of fact, but they deny that the contents or purpose or effect of the Final Decree are as stated in the motion, and they respectfully beg leave to refer to the original Final Decree for the exact contents and purpose and effect thereof.

4. Defendants admit that on December 21, 1940, this Court entered an Order entitled Order of Modification of Final Decree, purporting to change the date appearing in the second paragraph of Section 12 of said Final Decree from "January 1, 1941" to "January 1, 1942", and they respectfully beg leave to refer to the original Order for the exact contents thereof. Defendants allege that they appealed from that Order to the United States Supreme Court, that on December 8, 1941, that Court entered the following Order:

"Per curiam: The Court orders that the appeals in these cases be dismissed for want of a quorum of Justices qualified to sit in them. The Chief Justice, Mr. Justice Roberts, Mr. Justice Murphy, and Mr. Justice Jackson are unable to take part in the consideration or decision of these cases on the merits."

and that Defendants will duly apply for a rehearing of that appeal.

[fol. 154] 5. Defendants deny that circumstances arising since entry of the Final Decree, not attributable to undue delay or laches by the plaintiff, have prevented the plain-

tiff's bringing proceedings against General Motors Corporation to a conclusion by the date specified in Section 12 of the Final Decree or by the date specified in Section 12 of the Final Decree as Modified; deny that the essential purpose, or any purpose, of the Final Decree would be defeated if the prohibitions against affiliation were allowed to lapse prior to final determination of the plaintiff's proceeding to end the affiliation between General Motors Corporation and General Motors Acceptance Corporation, and deny that plaintiff has proceeded with due diligence to procure a decree requiring General Motors Corporation to divest itself of ownership of or control over General Motors Acceptance Corporation. Defendants allege that said civil suit is not at issue, and that General Motors Corporation and General Motors Acceptance Corporation have until January 15, 1942, to file their answer or to make any motion with respect to the complaint, and that the plaintiff not only has failed and neglected to expedite trial of the civil suit, but has failed and neglected to proceed in that suit so as to dispose of practice motions and other preliminary matters and to frame the issues for trial.

6. Defendants deny that the issues involved in a proceeding to obtain a civil decree against General Motors Corporation have been to a great extent involved in Criminal Case No. 1039, or that the issues in the civil proceeding will be substantially affected and settled by final disposition of said criminal proceeding. On the contrary, defendants allege that the issues involved in the plaintiff's civil suit [fol. 155] against General Motors Corporation, in so far as they concern the effectiveness of the second paragraph of Section 12 of the Final Decree, were not involved or settled in plaintiff's criminal case against General Motors Corporation except to the extent that the Court by its charge to the jury in that case ruled against the plaintiff on the issue of the propriety of General Motors Corporation having a finance company. In said case, Criminal Case No. 1039, the Court charged the jury on November 15, 1939, being more than a year prior to January 1, 1941, as follows:

"It is not unreasonable for the General Motors Company to have a finance company. * * * They have a perfect right to have a finance company and to recommend its use. * * *"

7. Defendants deny that for the plaintiff to have proceeded with the trial of the civil suit against General Motors Corporation before the criminal action was finally disposed of would have been undesirable and they allege that the plaintiff, itself, represented to the District Court for the Northern District of Illinois, Eastern Division, in opposing continuances of the civil suit long before the criminal case was finally disposed of that it was desirable to proceed with both cases simultaneously. Defendants further allege that the plaintiff, by representing to this Court, in its Motion for Modification of Final Decree in this case in December, 1940, that trial of the civil suit against General Motors Corporation would be facilitated by trial first of the Criminal Case No. 1039, enabled General Motors Corporation to obtain continuances of the civil suit although plaintiff in that suit took with the Court in Illinois a position opposite to what it took with this Court in December, 1940, and opposite to what it takes with this Court now.

[fol. 156] 8. Defendants allege that before the parties consented to the Final Decree of November 15, 1938, they discussed at length the period during which defendants should be restrained from having an interest in a finance company while General Motors Corporation was not similarly restrained; that the possibilities of delay were canvassed in detail; that both parties gave their consent to the Final Decree with full knowledge, and that consent was not given or obtainable except on the basis of said date. Edmund J. Ford, upon whose affidavit the plaintiff's motion is made, was not present at the conferences or negotiations at which the parties determined the form of the Final Decree.

9. Defendants beg leave to refer to all of the records of the Court in this case, with the same force and effect as though the same were set forth at length herein.

Wherefore, these answering defendants respectfully pray:

- (1) That said motion be dismissed forthwith; or
- (2) That, if said motion be not dismissed, plaintiff be required to plead with particularity any changed basic conditions of fact or law upon which it relies; and that defendants, thereafter, be given sufficient notice and opportunity to prepare their response and defense; or

(3). That, if said motion be not dismissed and if plaintiff is not required to plead further, the motion now filed herein be set down for hearing for the taking of proof on the merits, upon such terms and conditions as will assure defendants due notice of the issues and adequate opportunity to prepare its response or defense thereto.

[fol. 157] There is filed herewith a brief memorandum of points and authorities in support hereof.

Dated: December 22, 1941.

Parker, Crabill, Crumpacker, May, Carlisle & Beamer, S. J. Crumpacker, Larkin, Rathbone & Perry, Nicholas Kelly, 70 Broadway, New York, N. Y., Attorneys for Defendants Chrysler Corporation, DeSoto Motors Corporation, Plymouth Motor Corporation, Dodge Brothers Corporation and Chrysler Sales Corporation.

[fol. 158] STATE OF INDIANA,
St. Joseph County, ss:

WILLIAM STANLEY, being duly sworn, says: That he is an attorney and was at the time of the negotiations and entry herein of the Final Decree one of the attorneys for the above-named defendants, Chrysler Corporation, DeSoto Motors Corporation, Plymouth Motor Corporation, Dodge Brothers Corporation and Chrysler Sales Corporation; that he was present at substantially all of the conferences and negotiations at which the parties agreed upon the form of the Final Decree entered herein on the consent of the parties; that he has read and knows the contents of the foregoing Answer to the Complaint's Motion for Modification of Final Decree and of the Final Decree as Modified therein; that said Answer is true of his own knowledge.

William Stanley.

Sworn to before me this 22nd day of December, 1941.

Margaret Long, Notary Public.

IN UNITED STATES DISTRICT COURT

Statement of Evidence

And now on said 22nd day of December, 1941, the following proceedings were had herein, to-wit:

This cause coming on to be heard on this date, and appearance on behalf of the plaintiff being as follows, to-wit: Mr. Thurman Arnold, Special Assistant to the Attorney General, A. Holmes Baldridge, Special Assistant to the Attorney General, and Luther M. Swygert, Assistant United States Attorney, and for the defendant Chrysler Corporation, to-wit: Larkin, Rathbone & Perry, Nicholas Kelley, of counsel, William Stanley, and Parker, Crabill, Crumpacker, May, Carlisle & Beamer, S. J. Crumpacker of counsel, and the following evidence is introduced, to-wit:

[fol. 159]

OFFERS IN EVIDENCE

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

Civil No. 2177

Equitable Relief Sought

UNITED STATES OF AMERICA, Complainant,

v.

GENERAL MOTORS CORPORATION AND GENERAL MOTORS ACCEPT-
ANCE CORPORATION, Respondents

COMPLAINT

To The Honorable, The Judge of the District Court of the
United States for the Northern District of Illinois,
Eastern Division:

The United States of America, by William J. Campbell, United States Attorney for the Northern District of Illinois, Eastern Division, acting under the direction of the Attorney General of the United States, brings this action in equity against General Motors Corporation, a corporation, organized and duly authorized to do business under the laws of the state of Delaware, and General Motors Acceptance Corporation, a corporation, organized and duly authorized to do business under the laws of the State of New York; and complains and alleges upon information and belief as follows:

Description of Defendants

1. That defendant, General Motors Corporation, is engaged in the manufacture and sale of Chevrolet, Pontiac, Oldsmobile, Buick, LaSalle and Cadillac automobiles, and of parts and accessories for these six makes of automobiles, throughout the United States; that said defendant manufactures and sells approximately 40% of all the new automobiles and trucks manufactured and sold in the United [fol. 160] States; that General Motors Corporation is not only a manufacturing corporation but also a holding company, owning and controlling 100% of the capital stock of General Motors Sales Corporation, a corporation organized and duly authorized to do business under the laws of the state of Delaware, and engaged in the sale of General Motors cars to dealers located in all the states of the United States including the District of Columbia; that it owns 100% of the stock of defendant General Motors Acceptance Corporation; that certain directors of General Motors Corporation are also directors of General Motors Acceptance Corporation;

2. That defendant, General Motors Acceptance Corporation, is 100% owned and wholly controlled by defendant, General Motors Corporation; that defendant, General Motors Acceptance Corporation is engaged in the business of financing at both wholesale and retail the sales to General Motors dealers and to retail purchasers, of Chevrolet, Pontiac, Oldsmobile, Buick, LaSalle and Cadillac automobiles manufactured by defendant, General Motors Corporation;

Method of Selling General Motors Automobiles

3. That defendant, General Motors Corporation, sells its cars to approximately 15,000 General Motors dealers located in all the states of the United States and the District of Columbia, through the General Motors Sales Corporation, the selling agency of General Motors Corporation for Chevrolet, Pontiac, Oldsmobile, Buick, LaSalle and Cadillac automobiles; that these 15,000 General Motors dealers enter into contracts with General Motors Sales Corporation; that these contracts run for a period of one year and are cancellable by General Motors Sales Corporation on short notice and without cause; that these contracts state specifically that under no circumstances is the dealer to be con-

sidered either the agent or legal representative of General Motors Sales Corporation;

[fol. 161] 4. That the General Motors Sales Corporation was organized on December 1, 1936; that prior to the organization of General Motors Sales Corporation, the sales of Chevrolet, Pontiac, Oldsmobile, Buick, LaSalle and Cadillac cars were made to General Motors dealers located throughout the United States through five separate sales agencies, one for Chevrolet, one for Pontiac, one for Oldsmobile, one for Buick and one for LaSalle and Cadillac cars;

5. That because of the high unit prices for Chevrolet, Pontiac, Oldsmobile, Buick, LaSalle and Cadillac cars demanded by defendant, General Motors Corporation, and General Motors Sales Corporation, and because said corporations have required payment to be made in cash before transportation, shipment and delivery of General Motors cars to General Motors dealers, and because it has been necessary for the great majority of dealers to procure a stock of General Motors cars varying in color, body style, and otherwise far beyond their financial ability to pay for on a cash basis as required by said corporations, a large supply of money has been regularly and continuously necessary and has been regularly and continuously furnished and used to pay said corporations for Chevrolet, Pontiac, Oldsmobile, Buick, LaSalle and Cadillac cars transported, shipped and delivered to General Motors dealers in pursuance of the contracts mentioned in paragraph three above;

6. That many companies, including defendant, General Motors Acceptance Corporation, called automobile finance companies, have been organized and have engaged in the business of furnishing money to General Motors dealers, for the purchase of General Motors cars and of used cars of any and all makes taken in trade;

7. That because of the high unit prices for Chevrolet, Pontiac, Oldsmobile, Buick, LaSalle and Cadillac automobiles [fol. 162] demanded in retail transactions, and because defendant, General Motors Corporation, and General Motors Sales Corporation have required payment to be made on a cash basis before transportation, shipment and delivery of said cars, and because it has been necessary for all or almost all of the dealers to procure the full purchase

price of the automobile sold at the time of each retail transaction, and because the great majority of retail purchasers of automobiles have not had the financial ability to pay for the cars on a cash basis and have desired to purchase and have purchased said cars on time, a large supply of money has been regularly and continuously necessary and has been regularly and continuously furnished and used to pay the dealers for the automobiles purchased at retail;

8. That defendant, General Motors Acceptance Corporation, and numerous other corporations known as independent automobile finance companies doing business in all the states of the United States and the District of Columbia have regularly and continuously furnished money both to General Motors dealers for the wholesale purchase of General Motors cars and to retail purchasers of General Motors cars;

9. That in most instances in the sale of new cars at retail, a used car is traded in by the purchaser as a part of the purchase price of the new car and General Motors dealers have sold these used cars to retail purchasers; that used cars are taken in trade on the sale of these used cars so that for every new car sold by a General Motors dealer approximately $2\frac{1}{2}$ used cars are also sold by him; that until these $2\frac{1}{2}$ used cars are sold, the dealer is unable to determine whether he has made a profit on the new car; that a large proportion of these used cars have been and are sold on time to retail purchasers, and large sums of money are regularly and continuously necessary to finance such transactions; that such sums of money have been furnished by defendant, General Motors Acceptance Corporation, and by numerous corporations known as independent automobile finance companies doing business in [fol. 163] all the states of the United States and in the District of Columbia;

10. That as a part of the arrangement under which General Motors dealers purchase General Motors cars through General Motors Sales Corporation, defendant, General Motors Corporation, requires each dealer to give a blanket power of attorney; that this power of attorney is filled in by a person designated by the factory when General Motors cars are shipped to the dealer;

11. That title to all General Motors cars sold to General Motors dealers passes from defendant, General Motors Corporation, directly to defendant, General Motors Acceptance Corporation; that cars are shipped to dealers either on a trust receipt made out in favor of defendant, General Motors Acceptance Corporation, or on sight draft attached to the bill of lading made payable to defendant, General Motors Acceptance Corporation;

12. That under this arrangement it is impossible for a dealer purchasing new General Motors cars at wholesale on a time sales basis to finance said cars directly at the factory through any company other than defendant, General Motors Acceptance Corporation; that in the event a dealer wishes to finance at wholesale through an independent finance company, it is necessary that the independent finance company which desires title as security to secure title of the car from defendant, General Motors Acceptance Corporation; that independent finance companies which advance money to dealers for the purchase of cars from the factory, have no security for such advances during the time in which the car is in transit from the factory to the dealers' places of business;

13. That dealers who finance their cars at wholesale through defendant, General Motors Acceptance Corporation, receive possession and custody, but not title and ownership; that title and ownership do not pass to the dealer until defendant, General Motors Acceptance Corporation, [fol. 164] has been paid the full contract price of the car plus insurance and other charges;

14. That a retail purchaser of a General Motors car on a time sales basis signs a conditional sales contract with the dealer, that the dealer sells this conditional sales contract either to defendant, General Motors Acceptance Corporation, or to an independent finance company; that in the event it is sold to defendant, General Motors Acceptance Corporation, it is sold on condition that the dealer repurchase the contract from defendant, General Motors Acceptance Corporation, in the event the car is repossessed from the retail purchaser for non-payment of the installment contract; that the dealer is directly responsible for losses occasioned by repossession; that dealers selling retail time sales paper to independent finance companies sell the

same without recourse, so that the independent finance company and not the dealer bears the risk of default in case of repossession of the car;

15. That defendant, General Motors Corporation, through the General Motors Sales Corporation, requires its dealers to put into operation a bookkeeping system which indicates, among other things, the number of new and used cars sold each month, the number sold on a time sales basis, and the number of contracts sold to defendant, General Motors Acceptance Corporation, and to other discount companies; that defendant, General Motors Corporation, through representatives of General Motors Sales Corporation, requires 10-day and 30-day reports from dealers indicating these matters as well as the general financial condition of the dealer; that defendant, General Motors Corporation, through representatives of the General Motors Sales Corporation, regularly inspects the books and records of General Motors dealers; that information so obtained is made available to defendants, General Motors Corporation and General Motors Acceptance Corporation;

[fol. 165]

Jurisdiction and Venue

16. That this complaint is filed and the jurisdiction of this court is invoked to obtain equitable relief against defendants, General Motors Corporation and General Motors Acceptance Corporation, because of their violations, jointly and severally, as hereinafter alleged, of Section 1 of the Sherman Act and Sections 2 and 7 of the Clayton Act;

17. That the unlawful combination and conspiracy, hereinafter described, to restrain trade and commerce among the several states of the United States, have been carried on in part within the Northern District of Illinois, Eastern Division, and many of the unlawful acts pursuant thereto have been performed by defendants and their representatives in said district; that the interstate trade and commerce in Chevrolet, Pontiac, Oldsmobile, Buick, LaSalle and Cadillac automobiles, as hereinafter described, is carried on, in part, within said district; that both said defendants have usual places of business in the said district and there transact business and are within the jurisdiction of the court for the purpose of service;

Interstate Commerce

18. That General Motors automobiles manufactured by defendant, General Motors Corporation, have been and are manufactured at plants located in the states of Michigan, Wisconsin, Missouri, Georgia, New York, New Jersey and California; that these cars are shipped to General Motors dealers located in all of the 48 states and within the District of Columbia, pursuant to the selling contracts between such dealers and General Motors Sales Corporation described in paragraph 3 above; that title to the cars passes from defendant, General Motors Corporation, to defendant, General Motors Acceptance Corporation at the factory; that title remains in defendant, General Motors Acceptance Corporation, until the dealer has received the car and paid the purchase price in full whether in a cash or a time transaction; that defendant, General Motors Corporation, the manufacturer, General Motors Sales [fol. 166] Corporation, the selling agent, defendant, General Motors Acceptance Corporation, and the General Motors dealers are all engaged in interstate commerce;

19. That approximately 65% of all new General Motors automobiles sold to General Motors dealers at wholesale, and approximately 75% of all new General Motors automobiles sold at retail, are sold on a time sales basis; that any undue interference with the financing of General Motors automobiles either at wholesale or at retail would substantially impede the free flow of General Motors automobiles in interstate commerce;

Offenses Charged

20. That defendants, each well knowing all the matters and things hereinbefore alleged, for many years past have violated and are now violating the provisions of Section 1 of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," 26 Stat. 209, 15 U. S. C. A. 1, commonly known as the Sherman Antitrust Act, by conspiring to restrain the trade and commerce among the several states in Chevrolet, Pontiac, Oldsmobile, Buick, LaSalle and Cadillac automobiles, and have conspired to do all acts and things and to use all means necessary and appropriate to make said restraint effective, including the

means, acts and things hereinafter more particularly alleged; and have conspired together to violate Sections 2(a)(b)(c)(d)(e)(f), 3 and 7 of the Act of Congress of October 15, 1914, 38 Stat. 739, 15 U. S. C. A. 13 (a)(c)(d)(e)(f), 14-18, commonly known as the Clayton Act, by paying or granting rebates to General Motors dealers in return for their use of the financing facilities of defendant, General Motors Acceptance Corporation, and inducing the use of the same; and defendant, General Motors Corporation, with the participation of the other defendant has acquired the whole and a part of the stock and other share capital of defendant, General Motors Acceptance Corporation, while said corporations were engaged in interstate [fol. 167] commerce; and while defendant, General Motors Corporation, held said stock and other share capital and a part thereof it acquired the stock and other share capital and a part thereof of another corporation also engaged in said interstate commerce under conditions forbidden by and in violation of Section 7 of the Clayton Act aforesaid;

21. That one of the purposes of the conspiracy was to procure, monopolize and keep within the control of the defendants to the greatest extent possible, and to the exclusion of all other persons and corporations, the business of financing at wholesale and retail the trade and commerce in Chevrolet, Pontiac, Oldsmobile, Buick, LaSalle and Cadillac automobiles, and in used cars of any and all makes sold and handled by General Motors dealers; that as a part of said conspiracy, the defendants have arranged and agreed among themselves to do and have done the following things:

(a) To require dealers to promise and agree to deal with defendant, General Motors Acceptance Corporation, for financing the purchases and sales of automobiles, as a condition to entering into contracts for the sale, transportation and delivery of automobiles to dealers;

(b) To require dealers to promise and agree not to deal with any automobile finance company other than defendant, General Motors Acceptance Corporation, for financing the purchases and sales of General Motors automobiles, as a condition to entering into contracts for the sale, transportation and delivery of General Motors automobiles to dealers;

(c) To make all contracts for General Motors automobiles with General Motors dealers for a term of one year only, and to reserve therein the right to cancel and terminate the same, without cause and upon short notice, in order to exercise said right in cases where dealers shall fail and refuse to have purchases and sales of General Motors automobiles [fol. 168] financed by defendant, General Motors Acceptance Corporation, and in cases where dealers shall have purchases and sales of automobiles financed by automobile finance companies other than defendant, General Motors Acceptance Corporation;

(d) To threaten, suggest and intimate to General Motors dealers that contracts for General Motors automobiles with them may and will be cancelled and terminated in cases where the dealers fail and refuse to have purchases and sales of automobiles financed by defendant, General Motors Acceptance Corporation, and in cases where dealers have had purchases and sales of automobiles financed by automobile finance companies other than defendant, General Motors Acceptance Corporation;

(e) To cancel and terminate contracts for automobiles with dealers in cases where the dealers fail and refuse to have purchases and sales of automobiles financed by defendant, General Motors Acceptance Corporation, and in cases where dealers have had purchases and sales of automobiles financed by automobile finance companies other than defendant, General Motors Acceptance Corporation;

(f) To refuse and fail to furnish, transport and deliver automobiles to dealers who have refused and failed to have purchases and sales of automobiles financed by defendant, General Motors Acceptance Corporation;

(g) To refuse and fail to furnish, transport and deliver automobiles to General Motors dealers who have had purchases and sales of automobiles financed by automobile finance companies other than defendant, General Motors Acceptance Corporation;

(h) To examine and inspect the books, records and accounts of General Motors dealers for the purpose of procuring [fol. 169] information relative to the financing of purchases and sales of automobiles by automobile finance companies other than defendant, General Motors Acceptance Corporation;

(i) To coerce and compel General Motors dealers to permit the defendants and their agents to examine and inspect the books, records, and accounts of said dealers for the purpose of procuring information relative to the financing of purchases and sales of automobiles by automobile finance companies other than defendant, General Motors Acceptance Corporation;

(j) To coerce and compel General Motors dealers to disclose, furnish, and report information relative to the financing of purchases and sales of automobiles by automobile finance companies other than defendant, General Motors Acceptance Corporation;

(k) To procure information from the servants and employees of General Motors dealers, relative to the financing of purchases and sales of automobiles by automobile finance companies other than defendant, General Motors Acceptance Corporation, secretly, covertly, and without the knowledge of the dealers, and sometimes by means of bribery and otherwise;

(l) To require and demand of General Motors dealers that they explain and justify the financing of purchases and sales of automobiles by automobile finance companies other than defendant, General Motors Acceptance Corporation;

(m) To coerce and compel General Motors dealers to refrain from having the purchases and sales of automobiles financed by automobile finance companies other than defendant, General Motors Acceptance Corporation, by any and all other means which may be deemed by the defendants to be necessary, appropriate, and effective to that end;

(n) To give, furnish, accord, and make available to General Motors dealers having purchases and sales of automobiles financed by defendant, General Motors Acceptance Corporation, services, facilities, privileges, favors, conveniences, and other preferential treatment, in and in connection with financing the purchase and sale, transportation, and delivery of automobiles, and to refuse the same to dealers having purchases and sales of automobiles financed by automobile finance companies other than defendant, General Motors Acceptance Corporation;

(o) To delay the transportation, shipment, and delivery of automobiles to General Motors dealers having the purchases and sales of automobiles financed by automobile finance companies other than defendant, General Motors Acceptance Corporation;

(p) To discriminate against General Motors dealers having purchases and sales of automobiles financed by automobile finance companies other than defendant, General Motors Acceptance Corporation, and in favor of dealers having such purchases and sales financed by defendant, General Motors Acceptance Corporation, with regard to the number, model, color, and style of automobiles transported and delivered to them, with regard to the time of transportation and delivery thereof, and with regard to the manner and form, and time and place of payment therefor;

[fol. 171] (q) To give, furnish, accord, and make available to defendant, General Motors Acceptance Corporation, places, offices, and quarters in the plants, factories, offices, and quarters of defendant, General Motors Corporation, General Motors Sales Corporation, and of corporations affiliated with and controlled by them, for engaging in and acquiring the business of financing the purchase, sale, transportation, and delivery of automobiles to dealers, and to refuse the same to any other automobile finance company;

(r) To give, furnish, accord, and make available to defendant, General Motors Acceptance Corporation, information relative to the purchase and sale, and transportation and delivery of automobiles to dealers, including information relative to the description and identification of such automobiles, and to refuse the same to any other automobile finance company;

(s) To give, furnish, accord, and make available to defendant, General Motors Acceptance Corporation, any and all contracts, instruments, and other writings, requested, necessary and appropriate for its security and protection in and in connection with financing the purchase and sale, transportation and delivery of automobiles to dealers, and to refuse the same to any other automobile finance company;

(t) To transfer directly to defendant, General Motors Acceptance Corporation, the title to General Motors auto-

mobiles before the transportation and delivery thereof to General Motors dealers for the protection and security of defendant, General Motors Acceptance Corporation, in and in connection with financing the purchase and sale, and transportation and delivery thereof, and to refuse the same to any other automobile finance company;

[fol. 172] (u). To make and enforce discriminatory, onerous, and unreasonable requirements relative to the manner, form, and time of payment for automobiles, for application to all automobile finance companies except defendant, General Motors Acceptance Corporation, and to General Motors dealers having the purchase and sale of automobiles financed by such companies;

(v) To advertise, endorse, recommend and promote, and to coerce and require General Motors dealers to advertise, recommend and promote, the use of the automobile financing services, plans and facilities of defendant, General Motors Acceptance Corporation;

(w) To coerce and require General Motors dealers not to advertise, recommend and promote, the use of the automobile financing services, plans and facilities of any automobile finance company other than defendant, General Motors Acceptance Corporation;

(x) To establish and fix a price or charge to be collected by defendant, General Motors Acceptance Corporation, from purchasers of Cadillac, LaSalle, Buick, Oldsmobile, Pontiac and Chevrolet automobiles, and of used automobiles of any and all makes handled by General Motors dealers, in all transactions financed by those corporations (said price or charge being known as the GMAC differential), and to pay to the dealer a substantial part thereof, as a rebate, participation and payment for diverting the business of financing such purchases to defendant, General Motors Acceptance Corporation, and away from other automobile finance companies;

(y) To regularly and continuously advertise and represent to purchasers of said automobiles that no such rebates, [fol. 173] participations and payments have been and will be included in, and paid out of, such differential, and to induce, assist and require General Motors dealers to make, and join with and assist the defendants in making such representation;

(z) To regularly and continuously conceal, and induce, assist and require General Motors dealers to conceal, from purchasers of said automobiles, the fact that such rebates, participations and payments have been and will be included in and paid out of the GMAC differential;

That the said defendants were on the 27th day of May, 1938, in the Northern District of Indiana, South Bend Division, duly indicted as co-conspirators in the aforesaid conspiracy, and were duly tried and convicted thereof; and on, to wit, the 17th day of November, 1939, judgment of guilty was duly entered with sentence thereon as by the record appears; and the plaintiff herein sets forth as a part of this complaint a true and certified copy of said judgment and sentence, making the same a part hereof. And the plaintiff alleges further that other deceitful and unlawful practices in and affecting interstate trade and commerce and restraining the same have been perpetrated by said defendants as a part of their association as aforesaid;

Effects of Conspiracy

22. That General Motors dealers have substantial investments of money, credit and property in their businesses of purchasing and selling General Motors cars, and said investments and businesses would be greatly reduced in value or destroyed by defendants in the event the aforesaid intimations, suggestions, threats, cancellations, and statements are not adhered to; that to prevent such destruction, loss and damage of and to their investments and businesses, all or almost all of the dealers, have complied with said intimations, suggestions, threats and statements;

23. That General Motors dealers have been forced by coercion, discrimination and fraud to finance their purchases of General Motors automobiles at wholesale to defendant, General Motors Acceptance Corporation, and to sell their time sales paper on retail transactions to defendant, General Motors Acceptance Corporation, even though each and [fol. 174] every General Motors dealer, by the express terms of his selling agreement with defendant, General Motors Corporation, made through General Motors Sales Corporation, and drawn by defendant, General Motors Corporation, is not under any circumstances considered either the agent or legal representative of the seller;

24. That under the devices of the one year selling contract, blanket power of attorney, transfer of title on all cars direct from defendant, General Motors Corporation, to defendant, General Motors Acceptance Corporation, and the close check on dealers permitted by the installation of the factory bookkeeping system, the defendant, General Motors Corporation, can and does ship cars to dealers at will, with or without order, ship parts and accessories with or without order, or withhold cars, parts and accessories ordered;

25. That as a result of the conspiracy herein alleged, defendant, General Motors Acceptance Corporation, in effect finances at wholesale all the General Motors cars purchased by General Motors dealers on time, and finances at retail approximately 75% of the new General Motors cars and approximately 54% of the used cars of any and all makes sold by General Motors dealers;

26. That the effect of the conspiracy herein alleged and the acts, practices and things done pursuant thereto, has been to burden, obstruct and unduly restrain the interstate trade and commerce in General Motors automobiles;

27. That great size and power have been concentrated in the control of defendant, General Motors Corporation, and this has been used, in association with the other defendant, unreasonably to restrain competition, to force terms and prices, to coerce, intimidate and discriminate and thereby has unreasonably restrained interstate commerce and impeded its flow;

Conclusion

28. That the ownership of an automobile finance company by a company with as powerful a position as that of defendant, General Motors Corporation, controlling as it does over 15,000 dealers who are dependent upon the pleasure of the defendant, General Motors Corporation, for their livelihood and the preservation of their assets and franchises, with the vast majority of automobile sales in interstate commerce dependent upon the use of finance companies, acts as an unreasonable restraint on the use of finance companies other than defendant, General Motors Acceptance Corporation, and consequently upon the auto-

[fol. 175] mobile sales which must be financed; that the ownership of defendant, General Motors Acceptance Corporation, by defendant, General Motors Corporation, in itself tends to give defendant, General Motors Corporation, a monopoly in the financing of General Motors cars and control of the financing charges thereof; that defendant, General Motors Corporation, in addition thereto has required agreements from dealers that they will use exclusively, and to an amount designated, services of defendant, General Motors Acceptance Corporation, for the financing of the purchases and sales of General Motors cars and used cars of any and all makes sold by General Motors dealers; that defendant, General Motors Corporation, has threatened and discriminated against those dealers and has terminated contracts of those dealers who did not use exclusively the credit facilities of defendant, General Motors Acceptance Corporation; that through the medium of the repayment to dealers of the so-called "reserves" collected, and other rebates, bonuses and bribes by defendant, General Motors Acceptance Corporation, defendant, General Motors Corporation, has given secret rebates to dealers who use the credit facilities of defendant, General Motors Acceptance Corporation;

29. That complete ownership and control by defendant, General Motors Corporation, of defendant, General Motors Acceptance Corporation, is subject to abuses which would be impossible under independent ownership;

30. That the power of defendant, General Motors Corporation, flowing from its complete ownership and control of defendant, General Motors Acceptance Corporation, is such that it is subject to abuses which can be corrected only by a severance of that ownership and control; that an injunction is inadequate since, among other things, the mere fact of ownership constitutes a coercive influence on General Motors dealers purchasing and selling General Motors cars in interstate commerce.

[fol. 176]

Prayer

Wherefore the Complainant Prays:

1. That a summons issue to each of the defendants commanding it to appear herein and to answer the allegations contained in this complaint and to abide by and perform

such orders and decrees as the Court may make in the premises;

2. That upon final hearing of this cause, the Court order, adjudge and decree that the conspiracy and wrongs herein described exist and constitute an unreasonable restraint of trade and commerce among the various states and that as a part thereof and incidental thereto General Motors Corporation wrongfully holds the stock and share capital of General Motors Acceptance Corporation and all parties thereof;

3. That a receiver be appointed upon such adjudication to receive forthwith all stock and share capital of General Motors Acceptance Corporation held and controlled by General Motors Corporation and that General Motors Corporation be thereupon ordered forthwith to transfer the aforesaid stock and share capital to the aforesaid receiver, that the aforesaid receiver upon receiving the aforesaid stock and share capital offer the same for sale and sell the same holding the proceeds subject to the order of this Court;

4. That the complainant recover the costs and disbursements of this suit;

5. That the complainant shall have such other and further relief as the Court shall deem just and proper.

Holmes Baldrige, Edmond J. Ford, Special Assistants to the Attorney General.

[fol. 177] Robert H. Jackson, Attorney General. Thurman Arnold, Assistant Attorney General. William J. Campbell, United States Attorney.

(Here follow 4 photolithographs, side folios 178-181)

District Court of the United States

NORTHERN DISTRICT INDIANA - SOUTH BEND DIVISION

United States v. GENERAL MOTORS CORPORATION, et al.	No. 1039 Criminal Indictment in 222 counts for violation of U. S. C., Title 15, Sec. 1
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GENERAL MOTORS ACCEPTANCE

JUDGMENT AND COMMITMENT

On this 17th day of November, 1939, came the United States Attorney, and the defendant GENERAL MOTORS ACCEPTANCE CORPORATION, appearing in proper person, and by counsel and

The defendant having been convicted on Finding of guilty by jury of the offense charged in the indictment, in the above-entitled cause, to wit:

SHERMAN ANTI-TRUST LAW, Section 1, Title 15, U.S.C.A. -

One count of indictment, Violation of Sherman Anti-Trust Law, sentenced on one count of indictment,

and the defendant having been now asked whether it has anything to say why judgment should not be pronounced against it, and no sufficient cause to the contrary being shown or appearing to the Court, It is BY THE COURT

ORDERED AND ADJUDGED that the defendant, having been found guilty of said offenses, is hereby sentenced to the custody of the Attorney General for imprisonment, in an institution of the type to be designated by the Attorney General on his certificate, representing the minimum term to be served.

Fined in the sum of Five Thousand (\$5,000.00) Dollars, together with one half of the costs in this action, laid out and expended, taxed at \$_____.

~~that the said defendant be further imprisoned until payment of said fine or fine and costs or until said~~
~~defendant shall have paid the sum of \$100.00 or until said~~

~~defendant shall have paid the sum of \$100.00 or until said~~

~~that the said defendant be further imprisoned until payment of said fine or fine and costs or until said~~
~~defendant shall have paid the sum of \$100.00 or until said~~
~~defendant shall have paid the sum of \$100.00 or until said~~

(Signed)

Walter C. Lindley

Judge.

A True Copy. Certified this 17th day of November, 1939

(Signed)

MARGARET LONE

Clerk.

(By)

Chas. E. Lynam

Deputy Clerk.

"Indictment or information. "Insert "by counsel" or "having been asked whether he desired counsel assigned by the Court, replied that he did not," whichever is applicable. "Insert the words "his plea of guilty," "plea of not a contender," or "verdict of guilty," as the case may be. "Name specific offense or offenses and specify counts upon which convicted. "Insert type of institution such as "jail," "training school," "reformatory," "penitentiary," or "special." If prisoner's circumstances require special type institution, Marshal should submit facts and recommendations of Court to Attorney General where regulations do not apply. "Insert sentence and any provision for payment of fine and state whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin; that is, with reference to termination of preceding term, or with respect to any other outstanding or unserved sentence. "Strike out if Court did not so order. "Indicate any order with respect to suspension and probation. "Certified copy to accompany defendant to institution.

7-2224

OK as to
all camp stuff

**FEDERAL COURT OF THE UNITED STATES
District Court of the United States**

NORTHERN DISTRICT INDIANA - SOUTH BEND DIVISION

United States No. 1039 Criminal Indictment
in one counts for violation of U. S. C.,
Title 15, Secs. 1
GENERAL MOTORS CORPORATION, et al

GENERAL MOTORS CORPORATION JUDGMENT AND CONSENT

On this 17th day of November 1939, came the United States Attorney,
and the defendant GENERAL MOTORS CORPORATION appearing in proper person, and
by counsel and,

The defendant having been convicted on finding of guilty by jury of the offense charged
in the indictment in the above-entitled cause, to wit:

SHERMAN ANTI-TRUST LAW, Section 1, Title 15, U.S.C.A. -

One count of indictment, Violation of Sherman Anti-Trust Law,
Sentenced on one count of indictment,

and the defendant having been now asked whether it has anything to say why judgment
should not be pronounced against it, and no sufficient cause to the contrary being shown
or appearing to the Court, IT IS BY THE COURT

ORDERED AND ADJUDGED that the defendant, having been found guilty of said offenses, is hereby
~~sentenced to the terms of the indictment, to wit: Violation of Sherman Anti-Trust Law, Section 1, Title 15, U.S.C.A., and is hereby~~
~~sentenced to the terms of the indictment, to wit: Violation of Sherman Anti-Trust Law, Section 1, Title 15, U.S.C.A., and is hereby~~
~~sentenced to the terms of the indictment, to wit: Violation of Sherman Anti-Trust Law, Section 1, Title 15, U.S.C.A., and is hereby~~

Fined in the sum of Five Thousand (\$5,000.00) Dollars,
together with one half of the costs in this action,
laid out and expended, taxed at \$_____.

~~IT IS ORDERED THAT THE CLERK DELIVER A CERTIFIED COPY OF THIS JUDGMENT AND COMMITMENT TO THE UNITED STATES MARSHAL OR OTHER QUALIFIED OFFICER AND THAT THE SAME BE FORWARDED TO THE ATTORNEY GENERAL.~~

~~IT IS FURTHER ORDERED THAT~~

~~IT IS FURTHER ORDERED THAT THE CLERK DELIVER A CERTIFIED COPY OF THIS JUDGMENT AND COMMITMENT TO THE UNITED STATES MARSHAL OR OTHER QUALIFIED OFFICER AND THAT THE SAME BE FORWARDED TO THE ATTORNEY GENERAL.~~

(Signed)

Walter C. Lindley

Judge.

A True Copy. Certified this

17th

day of

November, 1939

(Signed)

MARGARET LONG

Clerk.

(By)

Wm. Lockman
Chief

Deputy Clerk.

*Indictment or information. *Insert "by counsel" or "having been asked whether he desired counsel assigned by the Court, replied that he did not," whichever is applicable. *Insert the words "his plea of guilty," "plea of nolo contendere," or "verdict of guilty," as the case may be. *Name specific offense or offenses and specify counts upon which convicted. *Insert type of institution such as "jail," "training school," "reformatory," "penitentiary," or "special." If prisoner's circumstances require special type institution, Marshal should submit facts and recommendations of Court to Attorney General where regulations do not apply. *Insert sentence and any provision for payment of fine and state whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin; that is, with reference to termination of preceding term, or with respect to any other outstanding or unserved sentence. *Strike out if Court did not so order. *Indicate any order with respect to suspension and probation. *Certified copy to accompany defendant to institution.

*OK as per
64 Lindley*

FEDERAL COURT OF THE UNITED STATES

NO. 1 DISTRICT INDIANA - SOUTH DIVISION

United States No. **1019** Criminal Indictment
v. **GENERAL MOTORS CORPORATION, et al** is **one** counts for violation of U. S. C.,
Title **15**, Secs. **1**

GENERAL MOTORS SALES CORPORATION JUDGMENT AND CONVICTION

On this **17th** day of **November**, 19 **39**, came the United States Attorney,
and the defendant **GENERAL MOTORS SALES CORPORATION**, appearing in proper person, and
by counsel and,
The defendant having been convicted on **finding of guilty by jury** of the offense charged
in the **indictment** in the above-entitled cause, to wit:

SHERMAN ANTI-TRUST LAW, Section 1, Title 15, U.S.C.A. -
One count of indictment, Violation of Sherman Anti-Trust Law,
Sentenced on one count of indictment,

and the defendant having been now asked whether **it** has anything to say why judgment
should not be pronounced against **it**, and no sufficient cause to the contrary being shown
or appearing to the Court, **IT IS BY THE COURT**

ORDERED AND ADJUDGED that the defendant, having been found guilty of said offenses, is hereby
~~sentenced to the custody of the United States Marshal for the term of years, to be designated by the Attorney General, or his authorized~~
~~representative, for the purpose of~~

Fined in the sum of Five Thousand (\$5,000.00) Dollars,

~~Indictment or information. Insert "by counsel" or "having been asked whether he desired counsel assigned by the Court, replied that he did not," whichever is applicable. Insert the words "his plea of guilty," "plea of nolo contendere," or "verdict of guilty," as the case may be. Name specific offense or offenses and specify counts upon which convicted. Insert type of institution such as "jail," "training school," "reformatory," "penitentiary," or "special." If prisoner's circumstances require special type institution, Marshal should submit facts and recommendations of Court to Attorney General where regulations do not apply. Insert sentence and any provision for payment of fine and state whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin; that is, with reference to termination of preceding term, or with respect to any other outstanding or unserved sentence. Strike out if Court did not so order. Indicate any order with respect to suspension and probation. Certified copy to accompany defendant to institution.~~

~~Indicate any order with respect to suspension and probation.~~

~~Indicate any order with respect to suspension and probation.~~

(Signed)

Walter C Lindley

Judge.

A True Copy. Certified this 17th day of November, 1939

(Signed)

MARGARET LONG

Clerk.

(By)

John Lechman

Chief Deputy Clerk.

Indictment or information. Insert "by counsel" or "having been asked whether he desired counsel assigned by the Court, replied that he did not," whichever is applicable. Insert the words "his plea of guilty," "plea of nolo contendere," or "verdict of guilty," as the case may be. Name specific offense or offenses and specify counts upon which convicted. Insert type of institution such as "jail," "training school," "reformatory," "penitentiary," or "special." If prisoner's circumstances require special type institution, Marshal should submit facts and recommendations of Court to Attorney General where regulations do not apply. Insert sentence and any provision for payment of fine and state whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin; that is, with reference to termination of preceding term, or with respect to any other outstanding or unserved sentence. Strike out if Court did not so order. Indicate any order with respect to suspension and probation. Certified copy to accompany defendant to institution.

OK as to form
W. Campbell

7-2224

WORK IN DISTRICT INDIANA - SOUTH BEND DIVISION

United States
GENERAL MOTORS CORPORATION, et al

No. 1039 Criminal Indictment
in one counts for violation of U. S. C.,
Title 15, Sec. 1

GENERAL MOTORS ACCEPTANCE JUDGMENT AND COMMITMENT
CORPORATION OF INDIANA, Incorporated,

On this 17th day of November, 1939, James the United States Attorney,
and the defendant General Motors Acceptance Corp., et al. appearing in proper person, and
by counsel

The defendant having been convicted on: Finding of guilty by Jury of the offense charged in the: Indictment in the above-entitled cause, to wit:

SHEPARD ANTI-TRUST LAW, Section 1, Title 15, U.S.C.A. -

One count of indictment, violation of Sherman Anti-Trust Law,
sentenced on one count of indictment,

and the defendant having been now asked whether _____ is has anything to say why judgment should not be pronounced against _____, and no sufficient cause to the contrary being shown or appearing to the Court, It is BY THE COURT

ORDERED AND ADJUDGED that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Sheriff of the County of Los Angeles, California, to be imprisoned in the County Jail for the period of _____ months to be computed by the Sheriff of the County of Los Angeles.

Fined in the sum of Five Thousand (\$5,000.00) Dollars,

~~It is further ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same be served on the defendant.~~
~~It is further ordered that~~

~~It is further ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same be served on the defendant.~~
~~It is further ordered that~~

(Signed) Walter C. Lindley Judge.
A True Copy. Certified this 17th day of November, 1939
(Signed) MARGARET LIND Clerk. (By) John Lockman Chief Deputy Clerk.

* Indictment or information. * Insert "by counsel" or "having been asked whether he desired counsel assigned by the Court, replied that he did not," whichever is applicable. * Insert the words "his plea of guilty," "plea of not guilty," or "verdict of guilty," as the case may be. * Name specific offense or offenses and specify counts upon which convicted. * Insert type of institution such as "jail," "training school," "reformatory," "penitentiary," or "special." If prisoner's circumstances require special type institution, Marshal should submit facts and recommendations of Court to Attorney General where regulations do not apply. * Insert sentence and any provision for payment of fine and state whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin; that is, with reference to termination of preceding term, or with respect to any other outstanding or unserved sentence. * Strike out if Court did not so order. * Indicate any order with respect to suspension and probation. * Certified copy to accompany defendant to institution.



[fol. 182] UNITED STATES OF AMERICA,
Northern District of Indiana, ss:

I, Margaret Long, Clerk of the United States District Court in and for the Northern District of Indiana, do hereby certify that the annexed and foregoing is a true and full copy of the original Judgment in the matter of United States vs. General Motors Corporation et al. Cause No. 1039 Criminal now remaining among the records of the said Court in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at South Bend, this 11th day of September, A.D. 1940.

Margaret Long, Clerk. By John Lochmand, Chief
Deputy Clerk. (Seal.)

[fol. 183] UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

I, Hoyt King, Clerk of the United States District Court in and for the Northern District of Illinois, do hereby certify that the annexed and foregoing is a true and full copy of the original Complaint filed October 4, 1940 in the case of United States of America vs. General Motors Corporation and General Motor Acceptance Corporation, Civil Action No. 2177, now remaining among the records of the said Court in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 15th day of December, A.D. 1941.

Hoyt King, Clerk. By Edward E. Douglas, Deputy
Clerk.

(Here follow 2 photolithographs, side folios 184-185)

864

District Court of the United States

FOR THE

Northern DISTRICT OF Illinois

Eastern DIVISION

CIVIL ACTION FILE NO. _____

UNITED STATES OF AMERICA

Plaintiff

SUMMONS

GENERAL MOTORS CORPORATION AND
GENERAL MOTORS ACCEPTANCE CORPORATION.

operation based to 2nd 5th 11th St.

Defendants

To the above named Defendant:

You are hereby summoned and required to serve upon

William J. Campbell, U. S. Attorney,

plaintiff's attorney, whose address is U. S. Courthouse, Chicago, Illinois

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Hoyt King

Clerk of Court

By

Ann G. Jones

Deputy Clerk

Date: October 4, 1940.

[Seal of Court]

184

NOTE.—Affidavit required only — service is made by a person other than a United States Marshal or his deputy.

[initials]

day of 19

Subscribed and sworn to before me, a

this

Deputy United States Marshal

By

United States Marshal

MANUAL'S FEES

Travel

Service

I received the within summons

I hereby certify and return, that on the

day of 19

RETURN ON SERVICE OF WRIT

M.D. 1829

No.

District Court of the United States

Northern District of Ill.

U. S. of Am.

General Motors Corp., et al.

SUMMONS IN CIVIL ACTION

Returnable not later

after service

FILED

Oct 10 1940

RECEIVED

Mr. J. Campbell

I served this writ, together with copy of Complaint, on the within named GENERAL MOTORS ACCEPTANCE CORPORATION, a corporation, by serving THE CORPORATION TRUST COMPANY, a corporation, Registered Agent authorized to accept service for GENERAL MOTORS ACCEPTANCE CORPORATION, by delivering copies thereof to Miss L. O. Peikes, Clerk, an agent of THE CORPORATION TRUST COMPANY, this 10th day of October, A.D., 1940. The President of GENERAL MOTORS ACCEPTANCE CORPORATION not found in my District.

The within named GENERAL MOTORS CORPORATION not found in my District.

WILLIAM P. WOODROW, United States Marshal, By [Signature] Deputy.

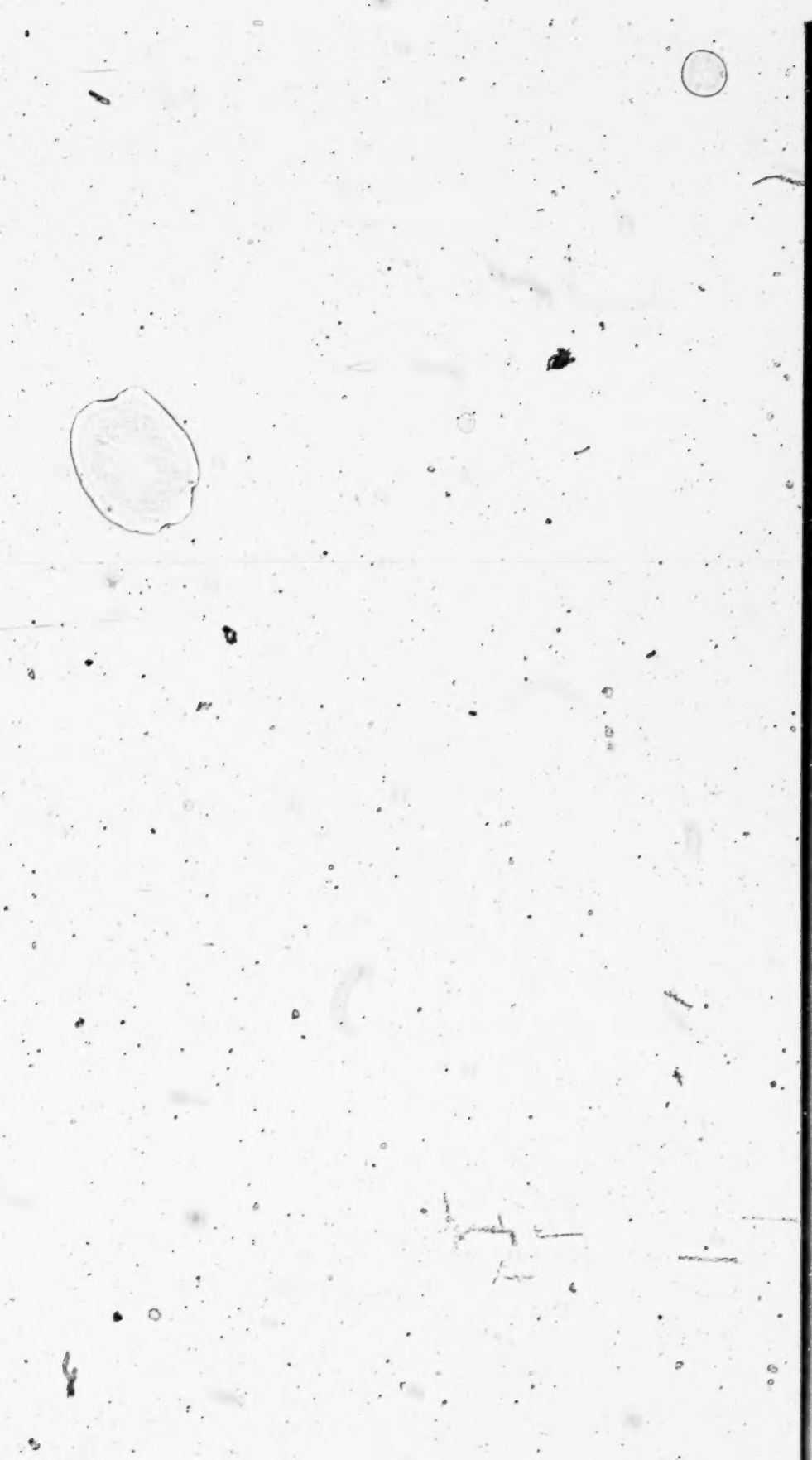
MANUAL'S FEES

Service

Writ

200

206



[fol. 186] UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

I, Hoyt King, Clerk of the United States District Court in and for the Northern District of Illinois, do hereby certify that the annexed and foregoing is a true and full copy of the original Summons with Return of U. S. Marshal thereon endorsed in the case of United States of America, vs. General Motors Corporation and General Motors Acceptance Corporation, Civil Action No. 2177, filed October 10, A. D. 1940, now remaining among the records of the said Court in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 15th day of December, A. D. 1941.

Hoyt King, Clerk. By Edward E. Douglas, Deputy
Clerk. (Seal.)

(Here follows 1 photolithograph/side folio 187)

United States District Court, Northern District of Illinois

Cause No. 2177 Civil

(Date) October 16 1940

Title of Cause UNITED STATES OF AMERICA, Complainant, v.

GENERAL MOTORS CORPORATION and

GENERAL MOTORS ACCEPTANCE CORPORATION, Respondents

Brief Statement
of Motion

*move for time
as of Oct 10, 1940*

That an alias summons issue as to respondent General Motors Corporation, the original having been returned marked "not found in this district".

Name of moving
Counsel

Leo F. Tierney, Special Assistant to the Attorney General
United States of America

Representing

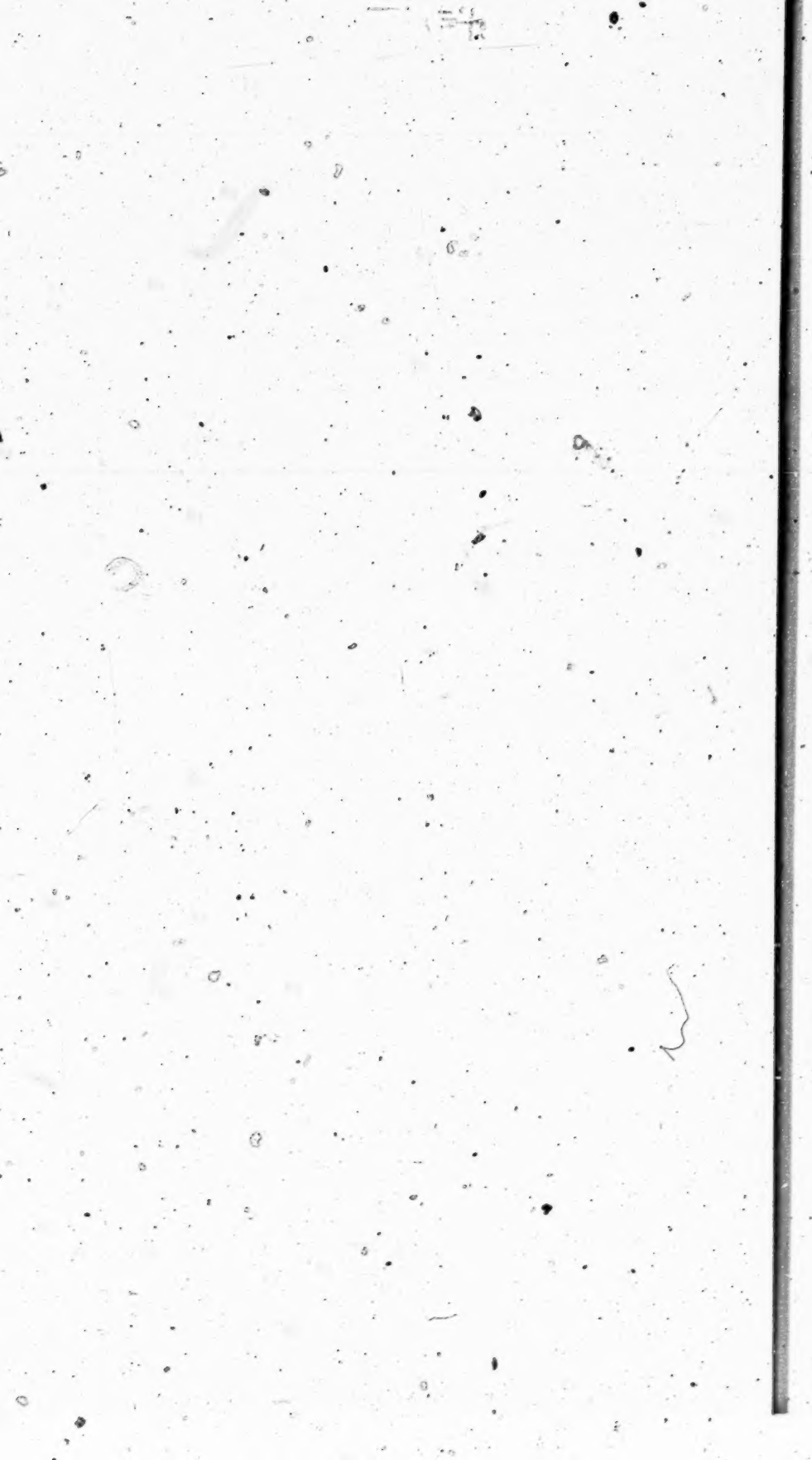
Name of opposing
Counsel (if any)

Enter Order

Chief W. H. ...

(Luft)

Read this memorandum to the Clerk.
Counsel will not rise to address the Court until motion has been called.



[fol. 188] IN THE DISTRICT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

UNITED STATES OF AMERICA, Complainant,

v.

GENERAL MOTORS CORPORATION and GENERAL MOTORS AC-
CEPTANCE CORPORATION, Respondents

Civil No. 2177

Equitable Relief Sought

PETITION

To the Honorable Philip L. Sullivan, Judge of the United
States District Court for the Northern District of Illi-
nois, Eastern Division:

A complaint in the above entitled action having been
filed in this Court on October 4, 1940, and

Summons having issued directed to respondent General
Motors Corporation, and having been returned by the Mar-
shal of this district and division, said summons being
marked, "not found in this District,"

Your petitioner prays that an alias summons issue, pur-
suant to Section 5 of the Sherman Act and Section 15 of
the Clayton Act, directed to General Motors Corporation,
General Motors Building, Broadway and 57th Street, New
York, N. Y., *nunc pro tunc* as of October 10, 1940, command-
ing it to appear herein and to answer each allegation con-
tained in the complaint and to abide by and perform such
acts, orders, and decrees as the Court may make in the
premises.

United States of America. Leo. F. Tierney, Special
Assistant to the Attorney General, 208 South La-
Salle Street, Chicago, Illinois.

[fol. 189] IN THE DISTRICT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Civil No. 2177

Equitable Relief Sought

UNITED STATES OF AMERICA, Complainant,

v.

GENERAL MOTORS CORPORATION and GENERAL MOTORS AC-
CEPTANCE CORPORATION, Respondents

ORDER

A complaint in the above entitled action having been filed
in this Court on October 4, 1940, and

Summons having issued directed to respondent General
Motors Corporation, and having been returned by the Mar-
shal of this district and division, said summons being
marked "not found in this District,"

It is ordered that an alias summons issue, pursuant to
Section 5 of the Sherman Act and Section 15 of the Clayton
Act, directed to General Motors Corporation, General Mo-
tors Building, Broadway and 57th Street, New York, N. Y.,
nunc pro tunc as of October 10, 1940, commanding it to
appear herein and to answer each allegation contained in
the complaint and to abide by and perform such acts,
orders, and decrees as the Court may make in the premises.

Done in open court this 17th day of October, 1940.

Philip L. Sullivan, United States District Judge.

[fol. 190] UNITED STATES OF AMERICA,

Northern District of Illinois, ss:

I, Hoyt King, Clerk of the United States District Court
in and for the Northern District of Illinois, do hereby
certify that the annexed and foregoing is a true and full
copy of the original Petition, together with Order thereto
attached, entered October 17, A. D. 1940, filed October 17,
1940, and Motion slip thereon, in the case of United States
of America vs. General Motors Corporation and General
Motors Acceptance Corporation, Civil Action No. 2177, now
remaining among the records of the said Court in my office.

In testimony whereof, I have hereunto subscribed my
name and affixed the seal of the aforesaid Court at Chicago,
Illinois, this 15th day of December, A. D. 1941.

Hoyt King, Clerk. By Edward E. Douglas, Deputy
Clerk.

(Here follow 2 photolithographs, side folios 191-192)

F. District Court of the United States

99A

FOR THE

Northern DISTRICT OF Illinois

Eastern DIVISION

CIVIL ACTION FILE NO. 2177

UNITED STATES OF AMERICA

Plaintiff

SUMMONS

GENERAL MOTORS CORPORATION and
GENERAL MOTORS ACCEPTANCE CORPORATION

Defendants

To the above named Defendant : GENERAL MOTORS CORPORATION

again

You are hereby summoned and required to serve upon William J. Campbell, United States Attorney,

Plaintiff's attorney, whose address is Room 453-U. S. Court House, Chicago, Ill.,

answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

ROY. KING

Clerk of Court

By John J. King

Deputy Clerk

October 10, A. D. 1940

[Seal of Court]

I hereby certify and return, that on _____
I received the within summons and on _____
at _____
I served same on the within named defendant _____
_____ by delivering to and leaving a copy thereof, together with
a copy of the bill of complaint with _____

Marshal's Fees

Travel..... \$.....
Service..... \$.....
\$.....

LEO LOWENTHAL,
U.S. MARSHAL, SDNY.

by William P. Sears
Deputy U.S. Marshal, SDNY.

No. 2177

District Court of the United States
Northern District of Illinois

UNITED STATES OF AMERICA

GENERAL MOTORS CORPORATION,
et al

ALIAS
SUMMONS IN CIVIL ACTION

Returnable not later than 20 days
after service.

FILED

OCT 24 1940
HOLT KING
CLERK

Wm. J. Campbell, U.S. Atty
Northern District of Illinois

[fols. 193-194] UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

I, Hoyt King, Clerk of the United States District Court in and for the Northern District of Illinois, do hereby certify that the annexed and foregoing is a true and full copy of the original Alias Summons with Return of U. S. Marshal of Southern District of New York endorsed thereon; filed October 21, 1940, in the case of United States of America vs. General Motors Corporation and General Motors Acceptance Corporation, Civil Action No. 2177, now remaining among the records of the said Court in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 15th day of December, A. D. 1941.

Hoyt King, Clerk, by Edward E. Douglas, Deputy Clerk.

[fol. 195] IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Civil No. 2177

UNITED STATES OF AMERICA, Complainant,

vs.

GENERAL MOTORS CORPORATION and GENERAL MOTORS ACCEPTANCE CORPORATION, Respondents

It is hereby stipulated and agreed by and between the attorneys for the respective parties to the above entitled action that the time of the several defendants to answer, plead, move for a bill of particulars, or otherwise move in respect of the complaint, be extended to and including January 20, 1941; and that an order to that effect may be entered upon this stipulation.

Dated: October 26, 1940.

J. Albert Woll, United States Attorney; Holmes Baldridge, Special Assistant to the Attorney General, Attorneys for Complainant. E. S. Ballard, Herbert Pope, John Thomas Smith, Henry M. Hogan, Attorneys for Respondents.

So ordered: — — —, U. S. D. J.
October —, 1940.

[fol. 196] UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

I, Hoyt King, Clerk of the United States District Court in and for the Northern District of Illinois, do hereby certify that the annexed and foregoing is a true and full copy of the original Stipulation filed October 30, 1940, in the case of United States of America vs. General Motors Corporation and General Motors Acceptance Corporation, Civil Action No. 2177, now remaining among the records of the said Court in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 15th day of December, A. D. 1941.

Hoyt King, Clerk, by Edward E. Douglas, Deputy Clerk.

(Here follows 1 photolithograph, side folio 197)

District Court of the United States
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

United States of America
 vs.
General Motors Corporation and
General Motors Acceptance
Corporation

No. *2177*

hereby enter the appearance of *General Motors Corporation and General Motors Acceptance Corporation*

and myself as *Attorneys* attorney in the above-entitled cause.
Ernest S. Ballard
Herbert Pope
John Thomas Smith
Henry M. Hagan Defendant's Attorneys

[fol. 198] UNITED STATES OF AMERICA;
Northern District of Illinois, ss:

I, Hoyt King, Clerk of the United States District Court in and for the Northern District of Illinois, do hereby certify that the annexed and foregoing is a true and full copy of the original Appearance filed October 30, 1940 in the case of United States of America vs. General Motors Corporation and General Motors Acceptance Corporation, Civil Action No. 2177, now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 15th day of December, A. D. 1940.

Hoyt King, Clerk, by Edward E. Douglas, Deputy
Clerk.

(Here follows 1 photolithograph, side folio 199)

United States District Court, Northern District of Illinois

Cause No. 2177

(Date) October 30, 1940

Title of Cause United States of America vs.
General Motors Corporation and
General Motors Acceptance Corporation.

Brief Statement
of Motion

Motion on stipulation to extend to
and including January 20, 1941, time of defend-
ants to answer, plead, move for a bill of
particulars, or otherwise move in respect of,
the complaint and to serve such answer, plead-
ing or motion.

Name of moving
Counsel

Ernest S. Ballard, et al.

Representing

the Defendants.

Name of opposing
Counsel (if any)

Enter order on stip

Draft

P.E.W.

Hand this memorandum to the Clerk.
Counsel will not rise to address the Court until motion has been called.

[fols. 200-201] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Civil No. 2177

UNITED STATES OF AMERICA, Complainant,

VS.

GENERAL MOTORS CORPORATION and GENERAL MOTORS ACCEPTANCE CORPORATION, Respondents

ORDER

This matter coming on to be heard on the stipulation of the parties by their respective attorneys,

It is Ordered that the time of the several defendants to answer, plead, move for a bill of particulars, or otherwise move in respect of the complaint, and the time within which they shall serve any such answer, pleading or motion be and the same is hereby extended to and including January 20, 1941.

Enter: Charles E. Woodward, District Judge.

Dated October 30, 1940.

Clerk's Certificate to foregoing paper, omitted in printing.

[fol. 202] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Civil No. 2177

UNITED STATES OF AMERICA, Plaintiff,

VS.

GENERAL MOTORS CORPORATION and GENERAL MOTORS ACCEPTANCE CORPORATION, Defendants

STIPULATION

It is Hereby Stipulated by and between the parties to the above cause by their respective attorneys that the time of the several defendants to answer, plead, move for a bill of particulars or otherwise move in respect of the com-

plaint may be extended to and including January 27, 1941, and that an order to that effect may be entered upon this stipulation.

It is Further Stipulated that the sole purpose of said extension is to enable all counsel to appear and be heard on a motion which defendants will present for a further extension of time within which to serve and file such an answer, pleading or motion.

Holmes Baldrige, Special Assistant to Attorney General, Attorney for Plaintiff. E. S. Ballard, Herbert Pope, John Thomas Smith, Henry M. Hogan, Attorneys for Defendants.

[fol. 203] UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

I, Hoyt King, Clerk of the United States District Court in and for the Northern District of Illinois, do hereby certify that the annexed and foregoing is a true and full copy of the original Stipulation filed January 16, 1941, in the case of United States of America vs. General Motors Corporation and General Motors Acceptance Corporation, Civil Action No. 2177, now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 15th day of December, A. D. 1941.

Hoyt King, Clerk, by Edward E. Douglas, Deputy Clerk.

(Here follows 1 photolithograph, side folio 204)

United States District Court, Northern District of Illinois

Case No. 2177

(Date) January 16, 1941

Title of Cause... United States of America vs. General Motors

Corporation and General Motors Acceptance Corporation.

Chief Statement
Motion

Motion on stipulation to extend time of defendants to answer, plead, move for a bill of particulars, or otherwise move in respect of the complaint to and including January 27, 1941.

Name of moving
Counsel

E. A. Ballard

Representing

Defendants

Name of opposing
Counsel (if any)

Enter order on stip

Draft

and this memorandum to the Clerk.
Counsel will not rise to address the Court until motion has been called.

[fols. 205-206] IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Civil No. 2177

UNITED STATES OF AMERICA, Plaintiff,

vs.

GENERAL MOTORS CORPORATION and GENERAL MOTORS AC-
CEPTANCE CORPORATION, Defendants

ORDER

This matter coming on to be heard on the stipulation of
the parties by their respective attorneys,

It Is Ordered that the time of the several defendants to
answer, plead, move for a bill of particulars, or otherwise
move in respect of the complaint, and the time within which
they shall serve any such answer, pleading or motion be
and the same is hereby extended to and including January
27, 1941.

Enter:

Holly, District Judge.

Dated January 16, 1941.

Clerk's Certificate to foregoing paper omitted in printing.

[fol. 207] IN THE DISTRICT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Civil No. 2177

UNITED STATES OF AMERICA, Plaintiff

vs.

GENERAL MOTORS CORPORATION and GENERAL MOTORS AC-
CEPTANCE CORPORATION, Defendants

STIPULATION

It Is Hereby Stipulated by and between the parties to the
above cause by their respective attorneys that the time of
the several defendants to answer, plead, move for a bill
of particulars or otherwise move in respect of the complaint

may be extended to and including May 1, 1941, and that an order to that effect may be entered upon this stipulation.

Edmond J. Ford, Special Assistant to Attorney General, Attorney for Plaintiff. E. S. Ballard, Herbert Pope, John Thomas Smith, Henry M. Hogan, Attorneys for Defendants.

[fol. 208] UNITED STATES OF AMERICA,

Northern District of Illinois, ss:

I, Hoyt King, Clerk of the United States District Court in and for the Northern District of Illinois, do hereby certify that the annexed and foregoing is a true and full copy of the original Stipulation filed January 24, 1941 in the case of United States of America vs. General Motors Corporation and General Motors Acceptance Corporation, Civil Action No. 2177, now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 15th day of December, A. D. 1941.

Hoyt King, Clerk. By Edward E. Douglas, Deputy Clerk. (Seal.)

(Here follows 1 photolithograph, side folio 209.)

United States District Court, Northern District of Illinois

Cause No. 2177

(Date) January 24, 1941

Title of Cause United States of America v. General Motors Corporation and General Motors Acceptance Corporation.

Brief Statement of Motion

Motion on stipulation to extend time of defendants to answer, plead, move for a bill of particulars, or otherwise move in respect of the complaint to and including May 1, 1941.

Name of moving Counsel

E. S. Ballard

Representing

Defendants

Name of opposing Counsel (if any)

[Handwritten signature]

Enter order on stip

Draft

Hand this memorandum to the Clerk.
Counsel will not rise to address the Court until motion has been called.

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[fols. 210-211] IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Civil No. 2177

UNITED STATES OF AMERICA, Plaintiff,

vs.

GENERAL MOTORS CORPORATION and GENERAL MOTORS AC-
CEPTANCE CORPORATION, Defendants

ORDER

This matter coming on to be heard on the stipulation of
the parties by their respective attorneys,

It Is Ordered that the time of the several defendants to
answer, plead, move for a bill of particulars, or otherwise
move in respect of the complaint, and the time within which
they shall serve any such answer, pleading or motion be
and the same is hereby extended to and including May 1,
1941.

Enter:

Holly, District Judge.

Dated, January 24, 1941.

Clerk's Certificate to foregoing paper omitted in printing.

(Here follows 1 photolithograph, side folio 212.)

United States District Court, Northern District of Illinois

Cause No. 2177

(Date) APR 11 21, 1941

Title of Cause United States of America v. General Motors

Corporation and General Motors Acceptance
Corporation

Statement of Motion

Motion on stipulation to extend time of defendants to answer, plead, move for a bill of particulars, or otherwise move in respect of the complaint to and including June 15, 1941.

Name of moving

E. S. Ballard

presenting

Defendants

Name of opposing Counsel (if any)

and this memorandum to the Clerk.

Counsel will not rise to address the Court until motion has been called.

[fol. 213] IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVI-
SION —

Civil No. 2177

UNITED STATES OF AMERICA, Plaintiff,

vs.

GENERAL MOTORS CORPORATION and GENERAL MOTORS AC-
CEPTANCE CORPORATION, Defendants

This matter coming on to be heard on the stipulation of
the parties by their respective attorneys, it is

Ordered that the time of the several defendants to an-
swer, plead, move for a bill of particulars, or otherwise
move in respect of the complaint, and the time within which
they shall serve any such answer, pleading or motion be
and the same is hereby extended to and including June
15, 1941.

Enter:

Holly, District Judge.

Dated, April 21, 1941.

[fol. 214] IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVI-
SION

Civil No. 2177

UNITED STATES OF AMERICA, Plaintiff,

vs.

GENERAL MOTORS CORPORATION and GENERAL MOTORS AC-
CEPTANCE CORPORATION, Defendants

STIPULATION

It is Hereby Stipulated by and between the parties to
the above cause by their respective attorneys that the time
of the several defendants to answer, plead, move for a bill
of particulars or otherwise move in respect of the com-
plaint may be extended to and including June 15, 1941,

and that an order to that effect may be entered upon this stipulation.

Holmes Baldrige, Special Assistant to Attorney General, Attorney for Plaintiff. John Thomas Smith, Henry M. Hogan, E. S. Ballard, Herbert Pope, Attorneys for Defendants.

[fol. 215] UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

I, Hoyt King, Clerk of the United States District Court in and for the Northern District of Illinois, do hereby certify that the annexed and foregoing is a true and full copy of the original Stipulation filed April 21, 1941, and attached thereto Order entered April 21, A. D. 1941, with Minute Order referring thereto, in the case of United States of America vs. General Motors Corporation and General Motors Acceptance Corporation, Civil Action No. 2177, now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 15th day of December, A. D. 1941.

Hoyt King, Clerk, by Edward E. Douglas, Deputy Clerk.

(Here follows 1 photolithograph, side folio 216)

United States District Court, Northern District of Illinois

CIVIL

Case No. 2177

(Date) June 13, 1941

Title of Cause UNITED STATES OF AMERICA, Plaintiff, vs.

GENERAL MOTORS CORPORATION and GENERAL MOTORS

ACCEPTANCE CORPORATION, Defendants

Brief Statement
of Motion

Motion of defendants to extend time to answer,
 plead, move for a bill of particulars, or other-
 wise move in respect of the complaint, to and
 including June 21, 1941.

Name of moving
Counsel

E. S. Ballard

Representing

Defendants

Name of opposing
Counsel (if any)

Hand this memorandum to the Clerk.
 Counsel will not rise to address the Court until motion has been called.

[fol. 217] IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVI-
SION

Civil No. 2177

UNITED STATES OF AMERICA, Plaintiff,

vs.

GENERAL MOTORS CORPORATION and GENERAL MOTORS AC-
CEPTANCE CORPORATION, Defendants

ORDER

This matter coming on to be heard upon the motion of defendants for an extension of time within which to answer, plead, move for a bill of particulars, or otherwise move in respect of the complaint, and it appearing to the Court that the plaintiff has consented to such extension.

It is Ordered that the time of the several defendants to answer, plead, move for a bill of particulars, or otherwise move in respect of the complaint, and the time within which they shall serve any such answer, pleading or motion, be and the same is hereby extended to and including June 21, 1941.

Enter:

Holly, District Judge.

June 13, 1941.

(Here follows 1 photolithograph, side folios 218-219)

STANDARD TIME INDICATED

RECEIVED AT

TELEPHONE YOUR RADIOGRAM
TO POSTAL TELEGRAPH

15 WORDS FOR THE **10**
USUAL PRICE OF
DOMESTIC SERVICES
FOREIGN SERVICES
AT STANDARD RATES

•PDJ WASHINGTON DC 238P 13

120 SO LASALLE ST CHGO

THURMAN ARNOLD ASST ATTORNEY GENL BY HOLMES BALDRIDGE
SPL ASST TO THE ATTY GENL

C. K.'s Certificate to foregoing
paper omitted in printing.

二二二

[fol. 220] IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVI-
SION

Civil Action No. 2177

UNITED STATES OF AMERICA, Plaintiff,

v.

GENERAL MOTORS CORPORATION, GENERAL MOTORS ACCEPT-
ANCE CORPORATION, and GENERAL MOTORS SALES CORPORA-
TION, Defendants

AMENDED COMPLAINT

*To the Honorable, the Judge of the District Court of the
United States for the Northern District of Illinois, East-
ern Division:*

Whereas, the complaint herein was filed on the 4th day of October, 1940, and no responsive pleading thereto has been filed or served, the United States of America, by J. Albert Woll, United States Attorney for the Northern District of Illinois, Eastern Division, acting under the direction of the Attorney General of the United States and pursuant to the provisions of Rule 15 (a) of the rules of Civil Procedure for the District Courts of the United States, files this amended complaint against General Motors Corporation, a corporation, organized and duly authorized to do business under the laws of the State of Delaware; General Motors Acceptance Corporation, a corporation, organized and duly authorized to do business under the laws of the State of New York, and General Motors Sales Corporation, a corporation, organized and duly authorized to do business under the laws of the State of Delaware; and complains and alleges upon information and belief as follows:

Description of Defendants

1. That defendant, General Motors Corporation, is engaged in the manufacture and sale of Chevrolet, Pontiac, [fol. 221] Oldsmobile, Buick, LaSalle and Cadillac automobiles, and of parts and accessories for these six makes of automobiles, throughout the United States; that said defendant manufactures and sells approximately 40% of all the new automobiles and trucks manufactured and sold in

the United States; that General Motors Corporation is not only a manufacturing corporation but also a holding company, owning and controlling 100% of the capital stock of defendant, General Motors Sales Corporation, a corporation engaged in the sale of General Motors cars to dealers located in all the states of the United States including the District of Columbia; that it owns 100% of the stock of defendant General Motors Acceptance Corporation; that certain directors of General Motors Corporation are also directors of General Motors Acceptance Corporation;

2. That defendant, General Motors Acceptance Corporation, is 100% owned and wholly controlled by defendant, General Motors Corporation; that defendant, General Motors Acceptance Corporation is engaged in the business of financing at both wholesale and retail the sales to General Motors dealers and to retail purchasers of Chevrolet, Pontiac, Oldsmobile, Buick, LaSalle and Cadillac automobiles manufactured by defendant, General Motors Corporation;

Method of Selling General Motors Automobiles

3. That defendant, General Motors Corporation, sells its cars to approximately 15,000 General Motors dealers located in all the states of the United States and the District of Columbia, through the defendant, General Motors Sales Corporation, the selling agency of General Motors Corporation for Chevrolet, Pontiac, Oldsmobile, Buick, LaSalle and Cadillac automobiles; that these 15,000 General Motors dealers enter into contracts with defendant, General Motors Sales Corporation; that these contracts run for a period [fol. 222] of one year and are cancellable by General Motors Sales Corporation on short notice and without cause; that these contracts state specifically that under no circumstances is the dealer to be considered either the agent or legal representative of General Motors Sales Corporation;

4. That defendant, General Motors Sales Corporation, was organized on December 1, 1936; that prior to the organization of General Motors Sales Corporation, the sales of Chevrolet, Pontiac, Oldsmobile, Buick, LaSalle and Cadillac cars were made to General Motors dealers located throughout the United States through five separate sales agencies, one for Chevrolet, one for Pontiac, one for Olds-

mobile, one for Buick and one for LaSalle and Cadillac cars;

5. That because of the high unit prices for Chevrolet, Pontiac, Oldsmobile, Buick, LaSalle and Cadillac cars demanded by defendants, General Motors Corporation and General Motors Sales Corporation, and because said corporations have required payment to be made in cash before transportation, shipment and delivery of General Motors cars to General Motors dealers, and because it has been necessary for the great majority of dealers to procure a stock of General Motors cars varying in color, body style, and otherwise far beyond their financial ability to pay for on a cash basis as required by said corporations, a large supply of money has been regularly and continuously necessary and has been regularly and continuously furnished and used to pay said corporations for Chevrolet, Pontiac, Oldsmobile, Buick, LaSalle and Cadillac cars transported, shipped and delivered to General Motors dealers in pursuance of the contracts mentioned in paragraph three above;

6. That many companies, including defendant, General Motors Acceptance Corporation, called automobile finance [fol. 223] companies, have been organized and have engaged in the business of furnishing money to General Motors dealers, for the purchase of General Motors cars and of used cars of any and all makes taken in trade;

7. That because of the high unit prices for Chevrolet, Pontiac, Oldsmobile, Buick, LaSalle and Cadillac automobiles demanded in retail transactions, and because defendants, General Motors Corporation and General Motors Sales Corporation, have required payment to be made on a cash basis before transportation, shipment and delivery of said cars, and because it has been necessary for all or almost all of the dealers to procure the full purchase price of the automobile sold at the time of each retail transaction, and because the great majority of retail purchasers of automobiles have not had the financial ability to pay for the cars on a cash basis and have desired to purchase and have purchased said cars on time, a large supply of money has been regularly and continuously necessary and has been regularly and continuously furnished and used to pay the dealers for the automobiles purchased at retail;

8. That defendant, General Motors Acceptance Corporation, and numerous other corporations known as independent automobile finance companies doing business in all the states of the United States and the District of Columbia have regularly and continuously furnished money both to General Motors dealers for the wholesale purchase of General Motors cars and to retail purchasers of General Motors cars;

9. That in most instances in the sale of new cars at retail, a used car is traded in by the purchaser as a part of the purchase price of the new car and General Motors dealers have sold these used cars to retail purchasers; that used cars are taken in trade on the sale of these used cars so that for every new car sold by a General Motors dealer approximately $2\frac{1}{2}$ used cars are also sold by him; that until these $2\frac{1}{2}$ used cars are sold, the dealer is unable to determine whether he has made a profit on the new car; that a large proportion of these used cars have been and are sold on time to retail purchasers, and large sums of money are regularly and continuously necessary to finance such transactions; that such sums of money have been furnished by defendant, General Motors Acceptance Corporation, and by numerous corporations known as independent automobile finance companies doing business in all the states of the United States and in the District of Columbia;

10. That as a part of the arrangement under which General Motors dealers purchase General Motors cars through defendant, General Motors Sales Corporation, defendants require each dealer to give a blanket power of attorney; that this power of attorney is filled in by a person designated by the factory when General Motors cars are shipped to the dealer;

11. That title to all General Motors cars sold to General Motors dealers passes from defendant, General Motors Corporation, through defendant, General Motors Sales Corporation, directly to defendant, General Motors Acceptance Corporation; that cars are shipped to dealers either on a trust receipt made out in favor of defendant, General Motors Acceptance Corporation, or on sight draft attached to the bill of lading made payable to defendant, General Motors Acceptance Corporation;

12. That under this arrangement it is impossible for a dealer purchasing new General Motors cars at wholesale

on a time sales basis to finance said cars directly at the factory through any company other than defendant, General Motors Acceptance Corporation; that in the event a dealer [fol. 225] wishes to finance at wholesale through an independent finance company, it is necessary that the independent finance company which desires title as security to secure title of the car from defendant, General Motors Acceptance Corporation; that independent finance companies which advance money to dealers for the purchase of cars from the factory, have no security for such advances during the time in which the car is in transit from the factory to the dealers' places of business;

13. That dealers who finance their cars at wholesale through defendant, General Motors Acceptance Corporation, receive possession and custody, but not title and ownership; that title and ownership do not pass to the dealer until defendant, General Motors Acceptance Corporation, has been paid the full contract price of the car plus insurance and other charges;

14. That a retail purchaser of a General Motors car on a time sales basis signs a conditional sales contract with the dealer; that the dealer sells this conditional sales contract either to defendant, General Motors Acceptance Corporation, or to an independent finance company; that in the event it is sold to defendant, General Motors Acceptance Corporation, it is sold on condition that the dealer repurchase the contract from defendant, General Motors Acceptance Corporation, in the event the car is repossessed from the retail purchaser for non-payment of the installment contract; that the dealer is directly responsible for losses occasioned by repossession; that dealers selling retail time sales paper to independent finance companies sell the same without recourse, so that the independent finance company and not the dealer bears the risk of default in case of repossession of the car;

[fol. 226] 15. That defendant, General Motors Corporation, through the defendant, General Motors Sales Corporation, requires General Motors dealers to put into operation a bookkeeping system which indicates, among other things, the number of new and used cars sold each month, the number sold on a time sales basis, and the number of contracts sold to defendant, General Motors Acceptance Corporation, and to other discount companies; that defendant, General

Motors Corporation, through representatives of defendant, General Motors Sales Corporation, requires 10-day and 30-day reports from dealers indicating these matters as well as the general financial condition of the dealer; that defendant, General Motors Corporation, through representatives of the defendant, General Motors Sales Corporation, regularly inspects the books and records of General Motors dealers; that information so obtained is made available to defendants, General Motors Corporation and General Motors Acceptance Corporation.

Jurisdiction and Venue

16. That this complaint is filed and the jurisdiction of this Court is invoked to obtain equitable relief against defendants, General Motors Corporation, General Motors Sales Corporation, and General Motors Acceptance Corporation, because of their violations, jointly and severally, as hereinafter alleged, of Section 1 of the Sherman Act and Sections 2 and 7 of the Clayton Act;

17. That the unlawful combination and conspiracy, hereinafter described, to restrain trade and commerce among the several states of the United States, have been carried on in part within the Northern District of Illinois, Eastern Division, and many of the unlawful acts pursuant thereto have been performed by defendants and their representatives in said district; that the interstate trade and commerce in Chevrolet, Pontiac, Oldsmobile, Buick, LaSalle and Cadillac automobiles, as hereinafter described, is carried on, in part, within said district; that said defendants have usual places of business in the said district and there transact business and are within the jurisdiction of the court for the purpose of service;

Interstate Commerce

18. That General Motors automobiles manufactured by defendant, General Motors Corporation, have been and are manufactured at plants located in the states of Michigan, Wisconsin, Missouri, Georgia, New York, New Jersey and California; that these cars are shipped to General Motors dealers located in all of the 48 states and within the District of Columbia, pursuant to the selling contracts between such dealers and defendant, General Motors Sales Corporation, described in paragraph 3 above; that title

to the cars passes from defendant, General Motors Corporation, through defendant, General Motors Sales Corporation, to defendant, General Motors Acceptance Corporation at the factory; that title remains in defendant, General Motors Acceptance Corporation, until the dealer has received the car and paid the purchase price in full whether in a cash or a time transaction; that defendant, General Motors Corporation, the manufacturer, defendant, General Motors Sales Corporation, the selling agent, defendant, General Motors Acceptance Corporation, and the General Motors dealers are all engaged in interstate commerce;

19. That approximately 65% of all new General Motors automobiles sold to General Motors dealers at wholesale, and approximately 75% of all new General Motors automobiles sold at retail, are sold on a time sales basis; that any undue interference with the financing of General Motors automobiles either at wholesale or at retail would [fol. 228] substantially impede the free flow of General Motors automobiles in interstate commerce;

Offenses Charged

20. That defendants, each well knowing all the matters and things hereinbefore alleged, for many years past have violated and are now violating the provisions of Section 1 of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," 26 Stat. 209, 15 U. S. C. A. 1, commonly known as the Sherman Antitrust Act, by conspiring to restrain the trade and commerce among the several states in Chevrolet, Pontiac, Oldsmobile, Buick, LaSalle and Cadillac automobiles, and have conspired to do all acts and things and to use all means necessary and appropriate to make said restraint effective, including the means and things hereinafter more particularly alleged; and have conspired together to violate Sections 2 (a) (b) (c) (d) (e) (f), 3 and 7 of the Act of Congress of October 15, 1914, 38 Stat. 730, 15 U. S. C. A. 13 (a) (c) (d) (e) (f), 14-18, commonly known as the Clayton Act, by paying or granting rebates to General Motors dealers in return for their use of the financing facilities of defendant, General Motors Acceptance Corporation, and inducing the use of the same; and defendant, General Motors Corpora-

tion, with the participation of the other defendants has acquired the whole and a part of the stock and other share capital of defendant, General Motors Acceptance Corporation, while said corporations were engaged in interstate commerce; and while defendant, General Motors Corporation, held said stock and other share capital and a part thereof it acquired the stock and other share capital and a part thereof in another corporation also engaged in said interstate commerce under conditions forbidden by and in violation of Section 7 of the Clayton Act aforesaid;

[fol. 229] 21. That one of the purposes of the conspiracy was to procure, monopolize and keep within the control of the defendants to the greatest extent possible, and to the exclusion of all other persons and corporations, the business of financing at wholesale and retail the trade and commerce in Chevrolet, Pontiac, Oldsmobile, Buick, LaSalle and Cadillac automobiles, and in used cars of any and all makes sold and handled by General Motors dealers; that as a part of said conspiracy, the defendants have arranged and agreed among themselves to do and have done the following things:

(a) To require dealers to promise and agree to deal with defendant, General Motors Acceptance Corporation, for financing the purchases and sales of automobiles, as a condition to entering into contracts for the sale, transportation and delivery of automobiles to dealers;

(b) To require dealers to promise and agree not to deal with any automobile finance company other than defendant, General Motors Acceptance Corporation, for financing the purchases and sales of General Motors automobiles, as a condition to entering into contracts for the sale, transportation and delivery of General Motors automobiles to dealers;

(c) To make all contracts for General Motors automobiles with General Motors dealers for a term of one year only, and to reserve therein the right to cancel and terminate the same, without cause and upon short notice, in order to exercise said right in cases where dealers shall fail and refuse to have purchases and sales of General Motors automobiles financed by defendant, General Motors Acceptance Corporation, and in cases where dealers shall have purchases and sales of automobiles financed by auto-

mobile finance companies other than defendant, General Motors Acceptance Corporation;

(d) To threaten, suggest and intimate to General Motors dealers that contracts for General Motors automobiles with them may and will be cancelled and terminated in cases where the dealers fail and refuse to have purchases and sales of automobiles financed by defendant, General Motors Acceptance Corporation, and in cases where dealers have had purchases and sales of automobiles financed by automobile finance companies other than defendant, General Motors Acceptance Corporation;

(e) To cancel and terminate contracts for automobiles with dealers in cases where the dealers fail and refuse to have purchases and sales of automobiles financed by defendant, General Motors Acceptance Corporation, and in cases where dealers have had purchases and sales of automobiles financed by automobile finance companies other than defendant, General Motors Acceptance Corporation;

(f) To refuse and fail to furnish, transport and deliver automobiles to dealers who have refused and failed to have purchases and sales of automobiles financed by defendant, General Motors Acceptance Corporation;

(g) To refuse and fail to furnish, transport and deliver automobiles to General Motors dealers who have had purchases and sales of automobiles financed by automobile finance companies other than defendant, General Motors Acceptance Corporation;

(h) To examine and inspect the books, records and accounts of General Motors dealers for the purpose of procuring information relative to the financing of purchases and sales of automobiles by automobile finance companies other than defendant, General Motors Acceptance Corporation;

(i) To coerce and compel General Motors dealers to permit the defendants and their agents to examine and inspect the books, records, and accounts of said dealers for the purpose of procuring information relative to the financing of purchases and sales of automobiles by auto-

mobile finance companies other than defendant, General Motors Acceptance Corporation;

(j) To coerce and compel General Motors dealers to disclose, furnish, and report information relative to the financing of purchases and sales of automobiles by automobile finance companies other than defendant, General Motors Acceptance Corporation;

(k) To procure information from the servants and employees of General Motors dealers, relative to the financing of purchases and sales of automobiles by automobile finance companies other than defendant, General Motors Acceptance Corporation, secretly, covertly, and without the knowledge of the dealers, and sometimes by means of bribery and otherwise;

(l) To require and demand of General Motors dealers that they explain and justify the financing of purchases and sales of automobiles by automobile finance companies other than defendant, General Motors Acceptance Corporation;

(m) To coerce and compel General Motors dealers to refrain from having the purchases and sales of automobiles financed by automobile finance companies other than defendant, General Motors Acceptance Corporation, by any and all other means which may be deemed by the defendant to be necessary, appropriate, and effective to that end;

[fol. 231] (n) To give, furnish, accord, and make available to General Motors dealers having purchases and sales of automobiles financed by defendant, General Motors Acceptance Corporation, services, facilities, privileges, favors, conveniences, and other preferential treatment, in and in connection with financing the purchase and sale, transportation, and delivery of automobiles, and to refuse the same to dealers having purchases and sales of automobiles financed by automobile finance companies other than defendant, General Motors Acceptance Corporation;

(o) To delay the transportation, shipment, and delivery of automobiles to General Motors dealers having the purchases and sales of automobiles financed by automobile finance companies other than defendant General Motors Acceptance Corporation;

(p) To discriminate against General Motors dealers having purchases and sales of automobiles financed by automobile finance companies other than defendant, General Motors Acceptance Corporation, and in favor of dealers having such purchases and sales financed by defendant, General Motors Acceptance Corporation, with regard to the number, model, color, and style of automobiles transported and delivered to them, with regard to the time of transportation and delivery thereof, and with regard to the manner and form, and time and place of payment therefor;

(q) To give, furnish, accord, and make available to defendant, General Motors Acceptance Corporation, places, offices, and quarters in the plants, factories, offices, and quarters of defendants, General Motors Corporation, General Motors Sales Corporation, and of corporations affiliated with and controlled by them, for engaging in and acquiring the business of financing the purchase, sale, transportation, and delivery of automobiles to dealers, and to refuse the same to any other automobile finance company;

(r) To give, furnish, accord, and make available to defendant, General Motors Acceptance Corporation, information relative to the purchase and sale, transportation and delivery of automobiles to dealers, including information relative to the description and identification of such automobiles, and to refuse the same to any other automobile finance company;

(s) To give, furnish, accord, and make available to defendant, General Motors Acceptance Corporation, any and all contracts, instruments, and other writings, requested, necessary and appropriate for its security and protection in and in connection with financing the purchase and sale, transportation and delivery of automobiles to dealers, and to refuse the same to any other automobile finance company;

[fol. 232] (t) To transfer directly to defendant, General Motors Acceptance Corporation, the title to General Motors automobiles before the transportation and delivery thereof to General Motors dealers for the protection and security of defendant, General Motors Acceptance Corporation, in and in connection with financing the purchase and sale,

and transportation and delivery thereof, and to refuse the same to any other automobile finance company;

(u) To make and enforce discriminatory, onerous, and unreasonable requirements relative to the manner, form, and time of payment for automobiles, for application to all automobile finance companies except defendant, General Motors Acceptance Corporation, and to General Motors dealers having the purchase and sale of automobiles financed by such companies;

(v) To advertise, endorse, recommend and promote, and to coerce and require General Motors dealers to advertise, recommend and promote, the use of the automobile financing services, plans and facilities of defendant, General Motors Acceptance Corporation;

(w) To coerce and require General Motors dealers not to advertise, recommend and promote, the use of the automobile financing services, plans and facilities of any automobile finance company other than defendant, General Motors Acceptance Corporation;

(x) To establish and fix a price or charge to be collected by defendant, General Motors Acceptance Corporation, from purchasers of Cadillac, LaSalle, Buick, Oldsmobile, Pontiac and Chevrolet automobiles, and of used automobiles of any and all makes handled by General Motors dealers, in all transactions financed by those corporations (said price or charge being known as the GMAC differential), and to pay to the dealer a substantial part thereof, as a rebate, participation and payment for diverting the business of financing such purchases to defendant, General Motors Acceptance Corporation, and away from other automobile finance companies;

(y) To regularly and continuously advertise and represent to purchasers of said automobiles that no such rebates, participations and payments have been and will be included in, and paid out of, such differential, and to induce, assist and require General Motors dealers to make, and join with and assist the defendants in making such representation;

(z) To regularly and continuously conceal, and induce, assist and require General Motors dealers to conceal, from purchasers of said automobiles, the fact that such rebates,

participations and payments have been and will be included in and paid out of the GMAC differential;

[fol. 233] 21 a. That said defendants were on the 27th day of May, 1937, in the Northern District of Indiana, South Bend Division, duly indicted as co-conspirators in the aforesaid conspiracy, and were duly tried and convicted thereof; and on, to wit, the 17th day of November, 1939, judgment of guilty was duly entered with sentence thereon as by the record appears; and the plaintiff herein sets forth as a part of this complaint a true and certified copy of said judgment and sentence, making the same a part hereof. And the plaintiff alleges further that other deceitful and unlawful practices in and affecting interstate trade and commerce and restraining the same have been perpetrated by said defendants as a part of their association as aforesaid;

Effects of Conspiracy

22. That General Motors dealers have substantial investments of money, credit and property in their businesses of purchasing and selling General Motors cars, and said investments and businesses would be greatly reduced in value or destroyed by defendants in the event the aforesaid intimations, suggestions, threats, cancellations, and statements are not adhered to; that to prevent such destruction, loss and damage of and to their investments and businesses, all or almost all of the dealers, have complied with said intimations, suggestions, threats and statements;

23. That General Motors dealers have been forced by coercion, discrimination and fraud to finance their purchases of General Motors automobiles at wholesale to defendant, General Motors Acceptance Corporation, and to sell their time sales paper on retail transactions to defendant, General Motors Acceptance Corporation, even though each and every General Motors dealer, by the express terms of his selling agreement with defendant, General Motors Corporation, made through defendant, General Motors Sales [fol. 234] Corporation, is not under any circumstances considered either the agent or legal representative of the seller;

24. That under the devices of the one year selling contract, blanket power of attorney, transfer of title on all cars direct from defendant, General Motors Corporation,

through defendant, General Motors Sales Corporation, to defendant, General Motors Acceptance Corporation, and the close check on dealers permitted by the installation of the factory bookkeeping system, the defendants, General Motors Corporation and General Motors Sales Corporation, can and do ship cars to dealers at will, with or without order, ship parts and accessories with or without order, or withhold cars, parts and accessories ordered;

25. That as a result of the conspiracy herein alleged, defendant, General Motors Acceptance Corporation, in effect finances at wholesale all the General Motors cars purchased by General Motors dealers on time, and finances at retail approximately 75% of the new General Motors cars and approximately 54% of the used cars of any and all makes sold by General Motors dealers;

26. That the effect of the conspiracy herein alleged and the acts, practices and things done pursuant thereto, has been to burden, obstruct and unduly restrain the interstate trade and commerce in General Motors automobiles;

27. That great size and power have been concentrated in the control of defendant, General Motors Corporation, and this has been used; in association with the other defendants unreasonably to restrain competition, to force terms and prices, to coerce, intimidate and discriminate and thereby has unreasonably restrained interstate commerce and impeded its flow;

[fol. 235]

Conclusion

28. That the ownership of an automobile finance company by a company with as powerful a position as that of defendant, General Motors Corporation, controlling as it does over 15,000 dealers who are dependent upon the pleasure of the defendants, General Motors Corporation and General Motors Sales Corporation, for their livelihood and the preservation of their assets and franchises, with the vast majority of automobile sales in interstate commerce dependent upon the use of finance companies, acts as an unreasonable restraint on the use of finance companies other than defendant, General Motors Acceptance Corporation, and consequently upon the automobile sales which must be financed; that the ownership of defendant, General Motors Acceptance Corporation, by defendant,

General Motors Corporation, in itself tends to give defendant, General Motors Corporation, a monopoly in the financing of General Motors cars and control of the financing charges thereof; that defendants, General Motors Corporation and General Motors Sales Corporation, in addition thereto have required agreements from dealers that they will use exclusively and to an amount designated, services of defendant, General Motors Acceptance Corporation, for the financing of the purchases and sales of General Motors cars and used cars of any and all makes sold by General Motors dealers; that defendants, General Motors Corporation and General Motors Sales Corporation, have threatened and discriminated against those dealers and have terminated contracts of those dealers who did not use exclusively the credit facilities of defendant, General Motors Acceptance Corporation; that through the medium of the repayment to dealers of the so-called "reserves" collected, and other rebates, bonuses and bribes, by defendant, General Motors Acceptance Corporation, defendant, General Motors Corporation, has given secret rebates to dealers who use the credit facilities of defendant, General Motors Acceptance Corporation;

[fnl. 236] 29. That complete ownership and control by defendant, General Motors Corporation, of defendant, General Motors Acceptance Corporation, is subject to abuses which would be impossible under independent ownership;

30. That the power of defendants, General Motors Corporation and General Motors Sales Corporation, flowing from the complete ownership and control of defendant, General Motors Acceptance Corporation, by defendant General Motors Corporation, is such that it is subject to abuses which can be corrected only by a severance of that ownership and control; that an injunction is inadequate since, among other things, the mere fact of ownership constitutes a coercive influence on General Motors dealers purchasing and selling General Motors cars in interstate commerce.

Prayer

Wherefore, the Complainant prays:

1. That a summons issue to each of the defendants commanding it to appear herein and to answer the allegations

contained in this complaint and to abide by and perform such orders and decrees as the Court may make in the premises;

2. That upon final hearing of this cause, the Court order, adjudge and decree that the conspiracy and wrongs herein described exist and constitute an unreasonable restraint of trade and commerce among the various states and that as a part thereof and incidental thereto General Motors Corporation wrongfully holds the stock and share capital of General Motors Acceptance Corporation and all parties thereof;

3. That a receiver be appointed upon such adjudication to receive forthwith all stock and share capital of General Motors Acceptance Corporation held and controlled by General Motors Corporation and that General Motors Corporation be thereupon ordered forthwith to transfer the aforesaid stock and share capital to the aforesaid receiver, that the aforesaid receiver upon receiving the aforesaid stock and share capital offer the same for sale and sell the same holding the proceeds subject to the order of this Court;

4. That the complainant recover the costs and disbursements of this suit;

5. That the complainant shall have such other and further relief as the Court shall deem just and proper.

Holmes Baldridge, Edmond J. Ford, Special Assistants to the Attorney General. Thurman Arnold, Assistant Attorney General. J. Albert Woll, United States Attorney.

[fol. 238] DISTRICT COURT OF THE UNITED STATES, NORTHERN
DISTRICT, INDIANA, SOUTH BEND DIVISION

No. 1039

Criminal Indictment in One Count for Violation of U. S. C.,
Title 15, Sec. 1

UNITED STATES

v.

GENERAL MOTORS CORPORATION, et al.

General Motors Acceptance Corporation, Judgment and
Commitment

On this 17th day of November, 1939, came the United
States Attorney, and the defendant General Motors Ac-
ceptance Corporation, appearing in proper person, and by
counsel and,

The defendant having been convicted on Finding of
guilty by jury of the offense charged in the indictment, in
the above-entitled cause, to-wit:

Sherman Anti-Trust Law, Section 1, Title 15, U. S. C. A.
—One count of indictment, Violation of Sherman Anti-
Trust Law, sentenced on one count of indictment,

and the defendant having been now asked whether it has
anything to say why judgment should not be pronounced
against it, and no sufficient cause to the contrary being shown
or appearing to the Court, It Is By The Court

Ordered And Adjudged That the defendant, having been
found guilty of said offenses, is hereby

fined in the sum of Five Thousand (\$5,000.00) Dollars,
together with one-half of the costs in this action, laid out
and expended, taxed at \$——.

(Signed) Walter C. Lindley, Judge.

[fol. 239] A True Copy. Certified this 17th day of Novem-
ber, 1939.

(Signed) Margaret Long, Clerk. By ———,
Deputy Clerk:

[fol. 240] DISTRICT COURT OF THE UNITED STATES, NORTHERN
DISTRICT, INDIANA, SOUTH BEND DIVISION

No. 1039

Criminal Indictment in One Count for Violation of U. S. C.,
Title 15, Sec. 1

UNITED STATES

v.

GENERAL MOTORS CORPORATION, et al.

General Motors Acceptance Corporation of Indiana, Incorporated, Judgment

On this 17th day of November, 1939, came the United States Attorney, and the defendant General Motors Acceptance Corp. of Ind., Incorporated, appearing in proper person, and by counsel and,

The defendant having been convicted on Finding of guilty by Jury of the offense charged in the indictment, in the above-entitled cause to wit:

Sherman Anti-Trust Law, Section 1, Title 15, U. S. C. A.
—One count of indictment, Violation of Sherman Anti-Trust Law, sentenced on one count of indictment,

and, the defendant having been now asked whether it has anything to say why judgment should not be pronounced against it, and no sufficient cause to the contrary being shown or appearing to the Court, It Is By The Court

Ordered And Adjudged that the defendant, having been found guilty of said offenses, is hereby Fined in the sum of Five Thousand (\$5,000.00) Dollars.

(Signed) Walter C. Lindley, Judge.

[fol. 241] A True Copy. Certified this 15th day of November, 1939.

(Signed) Margaret Long, Clerk. By — — —, Deputy Clerk.

[fol. 242] DISTRICT COURT OF THE UNITED STATES, NORTHERN
DISTRICT, INDIANA, SOUTH BEND DIVISION

No. 1039

Criminal Indictment in One Count for Violation of U. S. C.,
Title 15, Sec. 1

UNITED STATES

v.

GENERAL MOTORS CORPORATION, et al.

General Motors Sales Corporation Judgment

On this 17th day of November, 1939, came the United States Attorney, and the defendant General Motors Sales Corporation, appearing in proper person, and by counsel and,

The defendant having been convicted on Finding of guilty by jury of the offense charged in the indictment in the above-entitled cause, to wit

Sherman Anti-Trust Law, Section 1, Title 15, U. S. C. A.
—One count of indictment, Violation of Sherman Anti-Trust Law, Sentenced on one count of indictment,

and the defendant having been now asked whether it has anything to say why judgment should not be pronounced against it, and no sufficient cause to the contrary being shown or appearing to the Court, It Is By The Court.

Ordered And Adjudged that the defendant, having been found guilty of said offenses, is hereby Fined in the sum of Five Thousand (\$5,000.00) Dollars.

(Signed) Walter C. Lindley, Judge.

A True Copy. Certified this 17th day of November, 1939.

(Signed) Margaret Long, Clerk, by — — —, Deputy Clerk.

[fol. 243] DISTRICT COURT OF THE UNITED STATES, NORTHERN
DISTRICT, INDIANA—SOUTH BEND DIVISION

No. 1039

Criminal Indictment in One Count for Violation of U. S. C.,
Title 15, Sec. 1

UNITED STATES

v.

GENERAL MOTORS CORPORATION, et al.

GENERAL MOTORS CORPORATION JUDGMENT

On this 17th day of November, 1939, came the United States Attorney, and the defendant General Motors Corporation appearing in proper person, and by counsel and,

The defendant having been convicted on finding of guilty by jury of the offense charged in the indictment in the above-entitled cause, to wit

Sherman Anti-Trust Law, Section 1, Title 15, U. S. C. A.
—One count of indictment; Violation of Sherman Anti-Trust Law, Sentenced on one count of indictment,

and the defendant having been now asked whether it has anything to say why judgment should not be pronounced against it, and no sufficient cause to the contrary being shown or appearing to the Court, It Is By The Court

Ordered And Adjudged that the defendant, having been found guilty of said offenses, is hereby Fined in the sum of Five Thousand (\$5,000.00) Dollars, together with one half of the costs in this action, laid out and expended, taxed at

(Signed) Walter C. Lindley, Judge.

A True Copy. Certified this 17th day of November, 1939.

(Signed) Margaret Long, Clerk, by — — —, Deputy Clerk.

[fol. 244]. UNITED STATES OF AMERICA,
Northern District of Indiana, ss:

I, Margaret Long, Clerk of the United States District Court in and for the Northern District of Indiana, do hereby

certify that the annexed and foregoing is a true and full copy of the original Judgment against Defendants:

General Motors Acceptance Corporation,
General Motors Corporation,
General Motors Sales Corporation,
General Motors Acceptance Corporation of Indiana, Incorporated.

In the Case of United States vs. General Motors Corporation et al. Cause No. 1039 Criminal

now remaining among the records of the said court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at South Bend, this 4th day of October, A. D. 1940.

Margaret Long, Clerk, by Mary Sweeney, Deputy Clerk. (Seal.)

[fol. 245] UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

I, Hoyt King, Clerk of the United States District Court in and for the Northern District of Illinois, do hereby certify that the annexed and foregoing is a true copy of the original Amended Complaint filed June 21, 1941, in the case of United States of America vs. General Motors Corporation, General Motors Acceptance Corporation and General Motors Sales Corporation, Civil Action No. 2177, now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 15th day of December, A. D. 1941.

Hoyt King, Clerk, by Edward E. Douglas, Deputy Clerk.

[fol. 246] IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Civil No. 2177

UNITED STATES OF AMERICA, Plaintiff,

vs.

GENERAL MOTORS CORPORATION and GENERAL MOTORS ACCEPTANCE CORPORATION, Defendants

MOTION

Now come the defendants in the above entitled cause, by E. S. Ballart, their attorney, and move that the time within which defendants shall answer, plead, move for a bill of particulars or otherwise move in respect of the amended complaint herein, be extended to and including July 15, 1941.

Defendants attach hereto a postal telegram dated at Washington, D. C. on June 28, 1941, consenting to the aforesaid extension.

E. S. Ballard, Attorney for Defendants.

June 30, 1941.

(Here follows 1 photolithograph, side folio 247)

126A

<p>127-S. LA SALLE ST. CHICAGO 10000 TELEPHONE YOUR TELEGRAMS TO POSTAL TELEGRAPH</p>	<p>POSTAL TELEGRAPH</p>	<p>RECEIVED JUN 28 1941 U.S. DEPT. OF JUSTICE DIVISION OF INVESTIGATION</p>
<p>836NY SM 44 GOVT VIA MRT</p>		
<p>RY ASKINGTON DC 2279 JUNE 28</p>		
<p>E S BALLARD ESQ</p>		
<p>POPE AND BALLARD 120 SOUTH LASALLE ST CHGO ILL</p>		
<p>REFERENCE UNITED STATES VERSUS GENERAL MOTORS NUMBER TWO ONE SEVEN SEVEN</p>		
<p>THE GOVERNMENT CONSENTS TO EXTENSION OF TIME OF DEFENDANTS TO</p>		
<p>ANSWER PLEAD MORE FOR A BILL OF PARTICULARS OR OTHERWISE MOVE IN</p>		
<p>RESPECT TO AMENDED COMPLAINT TO AND INCLUDING JULY FIFTEENTH NINETEEN</p>		
<p>FORTY ONE</p>		
<p>THURMAN ARNOLD ASSISTANT ATTORNEY GENERAL</p>		

450P

[fol. 248] UNITED STATES OF AMERICA,
• Northern District of Illinois, ss:

I, Hoyt King, Clerk of the United States District Court in and for the Northern District of Illinois, do hereby certify that the annexed and foregoing is a true and full copy of the original Motion filed June 30, 1941, in the Case of United States of America, Plaintiff, vs. General Motors Corporation and General Motors Acceptance Corporation, Defendants, No. 2177, with telegram thereto attached, now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 15th day of December, A. D. 1941.

Hoyt King, Clerk, by Edward E. Douglas, Deputy Clerk.

(Here follows 1 photolithograph, side folio 249)



128A

United States District Court, Northern District of Illinois

CIVIL

No. 2177

(Date) June 30, 1941

of Cause UNITED STATES OF AMERICA, Plaintiff, vs.

GENERAL MOTORS CORPORATION and GENERAL MOTORS
ACCEPTANCE CORPORATION, Defendants

Statement
of Motion

Motion of defendants to extend time to answer,
plead, move for a bill of particulars, or other-
wise move in respect of the amended complaint,
to and including July 15, 1941

name of moving
counsel

E. S. Ballard

representing

Defendants

name of opposing
counsel (if any)

Defendants time to answer, etc.
extended to July 15, 1941

and this memorandum to the Clerk.

Counsel will not rise to address the Court until motion has been called.

[fols. 250-251] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Civil No. 2177

UNITED STATES OF AMERICA, Plaintiff,

vs.

GENERAL MOTORS CORPORATION and GENERAL MOTORS ACCEPTANCE CORPORATION, Defendants

ORDER

This matter coming on to be heard upon the motion of defendants for an extension of time within which to answer, plead, move for a bill of particulars, or otherwise move in respect of the amended complaint, and it appearing to the Court that the plaintiff has consented to such extension,

It is Ordered that the time of the several defendants to answer, plead, move for a bill of particulars, or otherwise move in respect of the amended complaint, and the time within which they shall serve any such answer, pleading or motion, be and the same is hereby extended to and including July 15, 1941.

Enter:

Igoe, District Judge.

June 30, 1941.

Clerk's Certificate to foregoing paper omitted in printing.

[fol. 252] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Civil No. 2177

UNITED STATES OF AMERICA, Plaintiff,

vs.

GENERAL MOTORS CORPORATION, GENERAL MOTORS ACCEPTANCE CORPORATION and GENERAL MOTORS SALES CORPORATION, Defendants

NOTICE

To Thurman Arnold, Assistant Attorney General; Holmes Baldrige, Edmond J. Ford, Victor O. Waters, Special

Assistants to the Attorney General, Department of Justice, Washington, D. C.; J. Albert Woll, United States Attorney, United States Court House, Chicago, Illinois:

You are hereby notified that on Tuesday, the 15th day of July, 1941, at the opening of court in the forenoon or as soon thereafter as counsel may be heard we shall appear before the Honorable William H. Holly in the room usually occupied by him as a court room in the United States Court House, Chicago, Illinois, or in his absence before such judge as may be hearing motions in the above case and move the court to extend the time within which defendants shall answer, plead, move for a bill of particulars or otherwise move in respect to the amended complaint.

A copy of said motion is handed you herewith.

John Thomas Smith, Henry M. Hogan, E. S. Ballard, Herbert Pope, Attorneys for Defendants.

[fol. 253] STATE OF ILLINOIS,
County of Cook, ss:

Parker L. Jacobson, being first duly sworn, upon oath deposes and says that on the 10th day of July, 1941, he served a copy of the foregoing notice and a copy of the motion therein described, upon the attorneys named in said notice by depositing in the United States mail box at No. 120 South La Salle Street, Chicago, Illinois, with first class postage prepaid, sealed envelopes containing copies of said notice and motion, addressed to said attorneys at their respective addresses shown in said notice.

Parker L. Jacobson.

Subscribed and sworn to before me this 14th day of July, 1941. Frances C. Robertson, Notary Public.
My commission expires April 18, 1942. (Seal.)

[fol. 254] UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

I, Hoyt King, Clerk of the United States District Court in and for the Northern District of Illinois, do hereby certify that the annexed and foregoing is a true and full copy of the original Notice filed July 15, 1941, in the Case

of United States of America, Plaintiff, vs. General Motors Corporation, General Motors Acceptance Corporation and General Motors Sales Corporation, Defendants, No. 2177, now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 15th day of December, A. D. 1941.

Hoyt King, Clerk, by Edward E. Douglas, Deputy Clerk.

[fol. 255] IN THE DISTRICT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Civil No. 2177

UNITED STATES OF AMERICA, Plaintiff,

vs.

GENERAL MOTORS CORPORATION; GENERAL MOTORS ACCEPTANCE
CORPORATION and General Motors Sales Corporation,
Defendants

MOTION TO EXTEND TIME TO ANSWER, PLEAD OR MOVE IN RE-
SPECT OF THE AMENDED COMPLAINT

Now come General Motors Corporation, General Motors Acceptance Corporation and General Motors Sales Corporation, defendants in the above cause, by their attorneys, and move that the time within which they shall answer, plead, move for a bill of particulars or otherwise move in respect of the amended complaint herein, and the time within which they shall serve and file such answer, pleading or motion be extended to and including January 31, 1942.

In support of said motion defendants submit the following suggestions:

1. It is alleged in said amended complaint (par. 21) that defendants have been tried and convicted of the supposed conspiracy complained of in said amended complaint; that judgment of guilty and sentence were duly entered thereon on November 17, 1939; and that copies of said judgment and sentence are attached to and made a part of said amended complaint.

[fol. 256] 2. On November 22, 1939, defendants served and filed their joint and several notice of appeal from said judgment. Thereafter the record in the cause in which said judgment was entered was duly filed in the office of the Clerk of the Circuit Court of Appeals for the Seventh Circuit. Briefs were submitted by all parties and oral argument was heard on January 17, 1941. On May 1, 1941, said Circuit Court of Appeals filed its opinion in which it affirmed said judgment of conviction. On May 22, 1941, said defendants filed with said Circuit Court of Appeals their petition for rehearing and on July 2, 1941, said petition for rehearing was denied.

3. It is the bona fide intention of said defendants to make application to the Supreme Court of the United States for a writ of certiorari within thirty (30) days from the date of the entry of the order denying said petition for rehearing to review the order of said Circuit Court of Appeals affirming the conviction and denying said rehearing. It is the belief of counsel for said defendants that there is merit in the case of said defendants and that the aforesaid judgment of the Circuit Court of Appeals ought to be reversed by the Supreme Court of the United States.

4. The trial of the aforesaid criminal proceeding involved certain issues which are or may be presented by the present suit in equity. The determination of said appeal therefore may affect the form or substance of the answer, motion or pleading to be filed by defendants and may clarify some of the problems involved in this proceeding.

5. In October, 1940, and shortly after this suit was instituted, a representative of defendants conferred with [fol. 257] Holmes Baldridge, Special Assistant to the Attorney General, assigned to this case, regarding a postponement of further proceedings herein until final disposition of said appeal. It was then agreed between said representative and said Baldridge that it would be advisable to defer any action herein until there had been a definitive solution of the issue involved in said appeal. Accordingly orders were entered herein from time to time on stipulation extending to and including June 21, 1941, defendants' time for serving their answer, pleading, motion for bill of particulars or other motion in respect of the complaint herein. On June 21, 1941, plaintiff filed its amended complaint

herein in which it added as a party defendant General Motors Sales Corporation which had previously not been a party defendant to this cause in equity.

6. After the filing of said amended complaint defendants requested a stipulation for a further extension of time within which to answer, plead or move herein and defendants were at that time advised by a representative of plaintiff that plaintiff could not consent to an extension beyond July 15, 1941. Accordingly an agreed order was entered herein on June 30, 1941, extending plaintiff's time to answer, plead or move herein to and including July 15, 1941. At that time counsel for defendants explained to counsel for plaintiff that defendants would probably apply to the court for a further extension.

7. Counsel for plaintiff has advised counsel for defendants that plaintiff cannot consent to any further extension because the continued existence of a certain consent decree heretofore entered by the District Court of the United [fol. 258] States for the Northern District of Indiana in a certain proceeding entitled, "United States of America, Petitioner, against Chrysler Corporation, Commercial Credit Company, et al., Respondents, Civil No. 9," depends upon the successful prosecution and conclusion of this proceeding during the calendar year 1941.

8. Defendants represent to the Court that it would be an undue hardship on both the Court and defendants to proceed further herein prior to the disposition of said criminal case either by the denial of defendants' petition for a writ of certiorari or by the judgment of the Supreme Court of the United States entered on certiorari, since the determination of said criminal proceeding might render nugatory much of the effort and work that would have been expended in connection with this case. Defendants further represent that because of the complexities of this case it is impossible in any event for them adequately to prepare, serve and file their answer, pleading or motion directed to the amended complaint herein or motion for a bill of particulars by July 15, 1941.

In support of said motion defendants also submit the affidavit of Ernest S. Ballard.

John Thomas Smith, Henry M. Hogan, E. S. Ballard,
Herbert Pope, Attorneys for Defendants.

[fol. 259] IN THE DISTRICT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Civil No. 2177

UNITED STATES OF AMERICA, Plaintiff,

vs.

GENERAL MOTORS CORPORATION, GENERAL MOTORS ACCEPTANCE
CORPORATION and General Motors Sales Corporation,

STATE OF ILLINOIS,
County of Cook, ss:

I, Ernest S. Ballard, being first duly sworn, depose and say: I am one of the attorneys of record for the defendants in the above entitled action. I have read the foregoing motion and suggestions in support thereof and know the contents thereof, and the same are true.

On June 28, 1941, I telephoned Holmes Baldrige, Special Assistant to the Attorney General, assigned to this case and was advised by his office that he was ill and not able to be at work but that his associate, Victor O. Waters, Special Assistant to the Attorney General, would talk to me in regard to the above case. I was thereupon connected with Mr. Waters, with whom I am personally acquainted, and I requested Mr. Waters to stipulate for an extension of defendants' time for serving and filing their answer, pleading or motions with respect to the amended complaint herein.

[fol. 260] Mr. Waters stated that he would consent to an extension for such purpose to and including July 15, 1941, but that the Government could not agree to such an extension for any further period as such an agreement might prejudice the Government in connection with the consent decree referred to in the foregoing motion and in connection with a certain appeal now pending in the Supreme Court of the United States from an order of the District Court of the United States for the Northern District of Indiana extending or altering a certain provision of said consent decree.

I thereupon stated to Mr. Waters that I would ask for an agreed order extending the time for defendants to answer, plead or move with respect to the amended complaint herein to and including July 15, 1941, and that within

said period I would probably present to the Court in the above cause a motion for a further extension until the final disposition of the criminal cause referred to in the foregoing motion or until the further order of the Court.

E. S. Ballard.

Subscribed and sworn to before me this 14th day of July, 1941. Frances C. Robertson, Notary Public.
My commission expires April 18, 1942. (Seal)

[fol. 261] UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

I, Hoyt King, Clerk of the United States District Court in and for the Northern District of Illinois, do hereby certify that the annexed and foregoing is a true and full copy of the original Motion to Extend Time to Answer, Plead or Move in Respect of the Amended Complaint, filed July 15, 1941, in the Case of the United States of America, Plaintiff, vs. General Motors Corporation, General Motors Acceptance Corporation and General Motors Sales Corporation, Defendants, No. 2177, now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 15th day of December, A. D. 1941.

Hoyt King, Clerk, by Edward E. Douglas, Deputy Clerk.

[fol. 262] IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Civil No. 2177

UNITED STATES OF AMERICA, Plaintiff,

vs.

GENERAL MOTORS CORPORATION, GENERAL MOTORS ACCEPTANCE CORPORATION and General Motors Sales Corporation,
Defendants

ORDER

This matter coming on to be heard upon the motion of defendants for an extension of time within which to answer,

plead, move for a bill of particulars or otherwise move in respect of the amended complaint and the Court having heard the arguments of counsel and being fully advised in the premises,

It is Ordered that the time of the several defendants to answer, plead, move for a bill of particulars or otherwise move in respect of the amended complaint, and the time within which they shall serve any such answer, pleading or motion, be and the same is hereby extended until the further order of the Court.

Enter:

Holly, District Judge.

July 15, 1941.

(Here follows 1 photolithograph, side folio 263-264)

United States District Court, Northern District of Illinois

136A

Case No. CIVIL NO. 2177

(Date) July 15, 1941

Title of Cause UNITED STATES OF AMERICA, Plaintiff, vs.

GENERAL MOTORS CORPORATION, GENERAL MOTORS
ACCEPTANCE CORPORATION and GENERAL MOTORS
SALES CORPORATION, Defendants

Brief Statement
of Motion

Motion to extend until further order of
Court defendants' time for answer,
pleading or motion for bill of particulars
or other motion with respect to amended
complaint.

Name of moving
Counsel

E. S. Ballard

Representing

The Defendants

Name of opposing
counsel (if any)

Enter order

Draft

And this memorandum to the Clerk.

Counsel will not rise to address the Court until motion has been called.

U.S. DIST. CT. - N.D. ILL. - 1941 - 2177 - 13

Clerk's Certificate to foregoing
paper omitted in printing.

263-264

[fol. 265] IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Civil No. 2177

UNITED STATES OF AMERICA, Plaintiff,

v.

GENERAL MOTORS CORPORATION, GENERAL MOTORS ACCEPTANCE
CORPORATION and General Motors Sales Corporation,
Defendants

NOTICE:

To: John Thomas Smith, Esq., Counsel for General Motors
Corporation and General Motors Sales Corporation,
Broadway at 57th Street, New York, New York, and
Ernest S. Ballard, Counsel for General Motors Acceptance
Corporation, 120 South LaSalle Street, Chicago,
Illinois:

You are hereby notified that on Tuesday, the Second day
of December, 1941, at the opening of Court, in the fore-
noon or as soon thereafter as counsel may be heard, we
will appear before the Honorable William H. Holly, in the
room usually occupied by him as a Court Room, in the
United States Court House, Chicago, Illinois, or in his
absence before such judge as may be hearing motions in the
above case, and move that the Court fix a day certain at
which time the defendants and each of them be required
to file in this Court any and all such preliminary, dilatory
or other motions and pleadings of defense as they may see
fit to file, including answers and any and all motions of
every character preliminary to trial, and that the Court fix
a date certain for the hearing on said motions and prelimi-
nary matters and for such other and further relief as the
Court may deem proper, in accordance with a motion in
said case, a copy of which is enclosed herewith.

Thurman Arnold, Assistant Attorney General of the
United States; Edmond J. Ford, Special Assistant
to the Attorney General of the United States, At-
torneys for the United States.

[fol. 266] IN THE DISTRICT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Civil No. 2177

UNITED STATES OF AMERICA, Plaintiff,

VS.

GENERAL MOTORS CORPORATION, GENERAL MOTORS ACCEPTANCE
CORPORATION and General Motors Sales Corporation,
Defendants

MOTION TO REQUIRE DEFENDANTS TO ANSWER AND OTHERWISE
PLEAD

Now comes The United States of America, complainant in the above cause, by Thurman Arnold, Assistant Attorney General, and Edmond J. Ford, Special Assistant to the Attorney General, and moves that the Court fix a day certain at which time the defendants and each of them be required to file in this Court any and all such preliminary, dilatory or other motions and defenses as they may see fit to file, including answer and any and all motions of every character preliminary to trial; that the Court fix a date certain for a hearing on said motions; and that such other and further relief as the Court may deem proper be granted.

In support of said motion complainant alleges and states:

1. That an indictment was returned May 27, 1938, in The United States District Court for the Northern District of Indiana, South Bend Division, Criminal No. 7146, against the above defendants, alleging a conspiracy identical to the conspiracy set forth in the complaint in this cause;

2. That a verdict of guilty was returned and judgment assessing fines in the amount of \$5000 each was entered [fol. 267] against the defendants, November 17, 1939, in the criminal case in The United States District Court for the Northern District of Indiana;

3. That the Circuit Court of Appeals for the Seventh Circuit issued an unanimous opinion sustaining the conviction of defendants in the Northern District of Indiana May 1, 1941, and denied defendants' petition for a rehearing July 2, 1941;

4. That the defendants filed their petition for a writ of certiorari in the Supreme Court August 6, 1941 from the judgment of the Circuit Court of Appeals affirming their conviction in the United States District Court for the Northern District of Indiana; That the Supreme Court denied defendants' petition for a writ of certiorari October 13, 1941, and denied defendants' petition for a rehearing on their petition for a writ of certiorari November 10, 1941;

5. That the complaint in this cause was filed more than a year ago, October 4, 1940;

6. That this complainant in the above cause stipulated that defendants' time in which to answer or otherwise plead be extended from October 24, 1940 to January 20, 1941; from January 20, 1941 to January 27, 1941; from January 27, 1941 to May 1, 1941; from May 1, 1941 to June 15, 1941; from June 15, 1941 to June 21, 1941. The complainant agreed to these extensions of defendants' time in which to plead because it was recognized that many, if not most, of the issues involved in this litigation would be determined by the companion criminal case and the Government did not wish to burden the courts or the defendants with the simultaneous trial of two cases which involved the same issues of fact and law;

7. That on June 21, 1941, complainant filed an amended complaint herein which did not substantially change the allegations of the original complaint other than to make General Motors Sales Corporation a party defendant;

8. That on July 15, 1941 this Court entered an order, upon motion of defendants, extending defendants' time within which to serve any answer, pleading or motion, until the further order of the Court. Defendants' motion of July 15 for a continuance until further order of the Court was primarily based upon an insistence that the trial of this cause would be greatly simplified if held in abeyance until a final adjudication in the Supreme Court was procured in the companion criminal case;

9. That this cause presents issues of vital public interest directly affecting approximately 15,000 General Motors dealers, 350 independent finance companies and thousands of retail time purchasers of automobiles manufactured by General Motors Corporation;

10. That the defendants have been granted more than a reasonable time in which to prepare their pleadings and defense in this cause;

11. That a final judgment has been entered in the companion criminal case by the United States Supreme Court which eliminates the reason heretofore urged by the defendants as cause for delay in the trial of this cause.

12. That the above named defendants and certain other automobile manufacturers and finance companies were on May 27, 1938, indicted in the United States District Court for the Northern District of Indiana; South Bend Division; that all of these indictments were returned at the same time and that subsequent thereto one of the groups of defendants indicted, to wit, the Chrysler Corporation and Commercial Credit Company, in a civil action duly brought in that Court, entered into a consent decree, approved by the Court, by the terms of which the aforesaid Chrysler [fol. 269] Corporation would be affected in its power to have ownership or control of a finance company dependent on the result of this present case; that the aforesaid Chrysler Corporation, alleging delay in prosecution of this case, has sought to have inserted at the foot of the aforesaid consent decree certain provisions which would permit it to own, control or associate with an automobile finance company; that the issues involved in this case directly and by the terms of the consent decree affect the rights of the Chrysler Corporation in the premises; that the Chrysler Corporation, insisting that failure to dispose of this case before this date has affected the rights of the United States under the consent decree, is asserting its claimed right of owning and operating a finance company; that it has been the endeavor of the United States for a long time, to wit, since the filing of this suit and since the return of the indictment, to dispose of the issues herein involved which in part are the same as were involved in the criminal case against the present defendants and thereby to dispose of the issues in the aforesaid Chrysler case, but that the repeated delay of the defendants in filing answers in this case has precluded the Government from disposing of these issues which would be binding and final by the terms of the consent decree in the aforesaid Chrysler case.

Wherefore, the Government prays that this motion may be allowed and that the defendants may be required to plead and answer as aforesaid.

Thurman Arnold, Assistant Attorney General. Edmond J. Ford, Special Assistant to the Attorney General, Attorneys for the United States.

[fol. 270] DISTRICT OF COLUMBIA,
Washington, D. C., ss:

Edmond J. Ford, being duly sworn upon oath, deposes and says that on the 29th day of November, 1941, he served a copy of the foregoing notice and a copy of the Motion therein described upon the attorneys named in said Motion, by depositing in the United States mails, at Washington, D. C., first class postage prepaid, copies of said Notice and Motion, addressed to the Attorneys named therein, at their respective addresses, shown in said notice.

Edmond J. Ford, Special Assistant to the Attorney General.

Subscribed and sworn to before me this 29th day of November, 1941. Beryl E. Lewis, Notary Public.
My commission expires June 1, 1946. (Seal.)

[fol. 271] UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

I, Hoyt King, Clerk of the United States District Court in and for the Northern District of Illinois, do hereby certify that the annexed and foregoing is a true and full copy of the Original Motion to Require Defendants to Answer and Otherwise Plead, filed December 1, 1941, in the Case of United States of America, Plaintiff, vs. General Motors Corporation, General Motors Acceptance Corporation and General Motors Sales Corporation, Defendants, No. 2177, now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 15th day of December, A. D. 1941.

Hoyt King, Clerk. By Edward E. Douglas, Deputy Clerk.

[fol. 272] FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN
DIVISION

Civil No. 2177

UNITED STATES OF AMERICA, Plaintiff

v.

GENERAL MOTORS CORPORATION, GENERAL MOTORS ACCEPTANCE
CORPORATION and GENERAL MOTORS SALES CORPORATION,
Defendants

AFFIDAVIT OF EDMOND J. FORD

Affidavits in support of the Government's motion to require the defendants to answer and otherwise to plead and in opposition to the defendants' motion to extend time to answer, plea, or move in respect to the amended complaint.

Edmond J. Ford, Special Assistant to the Attorney General of the United States, does hereby make oath that:

1. An indictment was returned on, to wit, May 27, 1938 in the United States District Court for the Northern District of Indiana, South Bend Division; Criminal Number 7146 against the above defendants alleging a conspiracy identical to the conspiracy set forth in the complaints in this issue. At the same time a similar indictment was returned against the Chrysler Corporation and Commercial Credit Company and others.

2. That a verdict of guilty was returned and judgment assessing fines in the amount of \$5,000 each plus certain costs was entered against the present defendants on November 17, 1939 in the aforesaid case.

3. That the Circuit Court of Appeals for the Seventh Circuit issued a unanimous opinion sustaining the conviction of the defendants in said case on May 1, 1941 and thereafter on July 2, 1941 denied defendants' petition for rehearing.

4. That the defendants filed a petition for a review on certiorari in the Supreme Court on August 6, 1941 directed to the judgment of the Circuit Court of Appeals mentioned above. That the Supreme Court denied the defendants' [fol. 273] petition for such return on October 13, 1941 and

denied the defendants' petition for a rehearing on this denial on November 10, 1941.

5. That the complaint in this case was filed more than a year ago, to wit, on October 4, 1940.

6. That on this complaint the Government has already stipulated that the defendants' time in which to answer or otherwise plead be extended from October 24, 1940 to January 20, 1941 and from January 20, 1941 to January 27, 1941 and from January 27, 1941 to May 1, 1941 and from May 1, 1941 to June 15, 1941, and from June 15, 1941 to June 21, 1941. That the Government agreed to these extensions of the defendants' time in which to plead at the request of the defendants and because it recognized that many, if not most, of the issues involved in this litigation would be determined by the decision of the criminal case above referred to and the Government did not wish to burden the courts or the defendants with the similar trial of two issues which involved the same issues of fact and law.

7. That on June 21, 1941 the complainant filed an amended complaint herein which did not substantially change the allegations of the original complaint other than make General Motors Sales Corporation a party defendant.

8. That on July 15, 1941 this court entered an order upon a motion of the defendants and over the opposition of the Government extending the defendants' time within which to serve any answer, pleading, or motion until the further order of the court. The defendants' motion of July 15 for a continuance until a further order of the court was primarily based upon an insistence that the trial of this cause would be greatly simplified if held in abeyance until a final adjudication in the Supreme Court was procured in the aforesaid criminal case.

9. That this cause presents issues of vital public interest directly affecting approximately 15,000 General Motors dealers, 350 independent finance companies, thousands of retail time purchasers of automobiles manufactured by the [fol. 274] General Motors Corporation and the disposition of a certain case now pending in the United States District Court for the Northern District of Indiana, South Bend Division wherein the United States of America is plaintiff and the Chrysler Corporation and others are defendants as will herein later appear.

10. That he believes that the defendants have been granted more than a reasonable time in which to prepare their pleadings and defense in the case.

11. That a final judgment has been entered in the aforesaid criminal case by the United States Supreme Court which eliminates the reason heretofore urged by the defendants as cause for delay in the trial of this case.

12. That the above named defendants and certain other automobile manufacturers and finance companies were on May 27, 1938, indicted in the United States District Court for the Northern District of Indiana, South Bend Division; that all of these indictments were returned at the same time and that subsequent thereto one of the groups of defendants indicted, to wit, the Chrysler Corporation and Commercial Credit Company, in a civil action duly brought in that Court, entered into a consent decree, approved by the Court, by the terms of which the aforesaid Chrysler Corporation would be affected in its power to have ownership or control of a finance company dependent on the result of this present case; that the aforesaid Chrysler Corporation, alleging delay in prosecution of this case, has sought to have inserted at the foot of the aforesaid consent decree certain provisions which would permit it to own, control or associate with an automobile finance company; that the issues involved in this case directly and by the terms of the consent decree affect the rights of the Chrysler Corporation in the premises; that the Chrysler Corporation, insisting that failure to dispose of this case before this date has affected the rights of the United States under the consent decree, is asserting its claimed right of owning and operating a finance company; that it has been the endeavor of the United States [fol. 275] for a long time, to wit, since the filing of this suit and since the return of the indictment, to dispose of the issues herein involved which in part are the same as were involved in the criminal case against the present defendants and thereby to dispose of the issues in the aforesaid Chrysler case, but that the repeated delay of the defendants in filing answers in this case has precluded the Government from disposing of these issues which would be binding and final by the terms of the consent decree in the aforesaid Chrysler case.

That the clauses of the aforesaid decree most pertinent to this issue are as follows: At page 21, § 12 "The respond-

ent Finance Company shall not pay to any automobile manufacturing company and the Manufacturer shall not obtain from any finance company any money or other thing of value as a bonus or commission on account of retail time sales paper acquired by the finance company from dealers of the Manufacturer. The Manufacturer shall not make any loan to or purchase the securities of Respondent Finance Company or any other finance company, and if it shall pay any money to Respondent Finance Company or any other finance company with the purpose or effect of inducing or enabling such finance company to offer to the dealers of the Manufacturer a lower finance charge than it would offer in the absence of such payment, it shall offer in writing to make, and if such offer is accepted it shall make, payment upon substantially similar bases, terms and conditions to every other finance company offering such lower finance charge; * * *

"It is an express condition of this decree that notwithstanding the provisions of the preceding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1941, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of [fol. 276] and/or control over or interest—any finance company or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a. The Court, upon application of the respondents or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted."

Paragraph 12a in Section (1) refers to the criminal case of the United States against General Motors Corporation described above. Paragraph (2) recites that a general verdict of guilty returned against General Motors Corporation in said proceedings followed by an entry of judgment thereof shall be deemed to be a determination of the illegality of any agreement, act, or practice of General Mo-

tors Corporation which is held by the trial court in its instructions to the jury to constitute a proper basis for the return of a general verdict of guilty. It was anticipated that an issue in the criminal case as tried might properly dispose of the aforesaid Chrysler Case under this provision, but the judge's charge did not contain instructions to accomplish this result. Under paragraph 14 of said decree the trial court retained jurisdiction to modify the aforesaid decree and did so modify the aforesaid decree on motion by modifying section 12, quoted above, and thereby extending from January 1, 1941 to January 1, 1942 the date at which a final decree requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation might be entered and effective against the Chrysler Corporation. From this decision of the District Court the Chrysler Corporation appealed to the Supreme Court. The case has there been argued but has not yet been decided. The Chrysler Corporation is insisting upon its rights to have entry made at the foot of the decree permitting it to have a finance company of its own and in substantiating its claim has pointed [fol. 277] out and is still pointing out that General Motors Corporation is permitted to associate with General Motors Acceptance Corporation and that this is an advantage to General Motors Corporation, a business rival of the Chrysler Corporation. Failure of the defendants to plead delays disposition of this present case and justice seems to require that this case be disposed of as soon as possible.

Edmond J. Ford, Special Assistant to Attorney General.

District of Columbia, Washington, D. C. on the first day of December 1941 personally appeared Edmond J. Ford, described above, and signed the above affidavit and before me made oath that the statements therein are true to the best of his knowledge, information, and belief, that his knowledge of these facts has arisen from his association with the various cases described and the procedure therein.

Beryl E. Lewis, Notary Public. (Seal.) My commission expires June 1, 1936.

[fol. 278]. UNITED STATES OF AMERICA

Northern District of Illinois, ss:

I, Hoyt King, Clerk of the United States District Court in and for the Northern District of Illinois, do hereby cer-

tify that the annexed and foregoing is a true and full copy of the original Affidavit of Edmund J. Ford, Special Assistant to the Attorney General of the United States, filed December 2, 1941, in the Case of United States of America, Plaintiff, vs. General Motors Corporation, General Motors Acceptance Corporation and General Motors Sales Corporation, Defendants, No. 2177, now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 15th day of December, A. D. 1941.

Hoyt King, Clerk, by Edward E. Dunkerk, Deputy Clerk.

[fol. 279] IN THE DISTRICT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Civil No. 2177

UNITED STATES OF AMERICA, Plaintiff,

vs.

GENERAL MOTORS CORPORATION, GENERAL MOTORS ACCEPTANCE CORPORATION and General Motors Sales Corporation,
Defendants

NOTICE

To Thurman Arnold, Assistant Attorney General; Holmes Baldrige; Edmond J. Ford, Victor O. Waters, Special Assistants to the Attorney General, Department of Justice, Washington, D. C.; J. Albert Woll, United States Attorney, United States Court House, Chicago, Illinois.

You Are Hereby Notified that on Tuesday, the 2d day of December, 1941, at the opening of court in the forenoon or as soon thereafter as counsel may be heard we shall appear before the Honorable William H. Holly in the room usually occupied by him as a court room in the United States Court House, Chicago, Illinois, or in his absence before such judge as may be hearing motions in the above case and move the court to extend the time within which defendants shall

answer; plead, move for a bill of particulars or otherwise move in respect to the amended complaint.

A copy of said motion is handed you herewith.

E. S. Ballard, Herbert Pope, John Thomas Smith,
Henry M. Hogan, Attorneys for Defendants.

[fol. 280] STATE OF ILLINOIS,
County of Cook, ss:.

PARKER L. JACOBSON, being first duly sworn, upon oath deposes and says that on the 28th day of November, 1941, he served a copy of the foregoing notice and a copy of the motion therein described, upon the attorneys named in said notice by depositing in the United States mail box at No. 120 South La Salle Street, Chicago, Illinois, with first class postage prepaid, sealed envelopes containing copies of said notice and motion, addressed to said attorneys at their respective addresses shown in said notice.

Parker L. Jacobson.

Subscribed and sworn to before me this 28th day of November, 1941. Frances C. Robertson, Notary Public. My commission expires April 18, 1942. (Seal.)

[fol. 281] UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

I, Hoyt King, Clerk of the United States District Court in and for the Northern District of Illinois, do hereby certify that the annexed and foregoing is a true and full copy of the original Notice filed December 2, 1941, in the Case of United States of America, Plaintiff, vs. General Motors Corporation, General Motors Acceptance Corporation and General Motors Sales Corporation, Defendants, No. 2177, now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 15th day of December, A. D. 1941.

Hoyt King, Clerk, by Edward E. Douglas, Deputy Clerk.

[fol. 282] IN THE DISTRICT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Civil No. 2177

UNITED STATES OF AMERICA, Plaintiff,

VS.

GENERAL MOTORS CORPORATION, GENERAL MOTORS ACCEPTANCE
CORPORATION and General Motors Sales Corporation,
Defendants

MOTION TO EXTEND TIME TO ANSWER, PLEAD OR MOVE IN
RESPECT OF THE AMENDED COMPLAINT

Now come General Motors Corporation, General Motors Acceptance Corporation and General Motors Sales Corporation, defendants in the above cause, by their attorneys, and move that the time within which they shall answer, plead, move for a bill of particulars or otherwise move in respect of the amended complaint herein, and the time within which they shall serve and file such answer, pleading or motion be extended until the further order of the court.

In support of said motion defendants submit the following suggestions:

1. It is alleged in said amended complaint (par. 21) that defendants have been tried and convicted of the supposed conspiracy complained of in said amended complaint; that judgment of guilty and sentence were duly entered thereon on November 17, 1939; and that copies of said judgment and sentence are attached to and made a part of said amended complaint.

[fol. 283] 2. Within the time prescribed by law the defendants to the aforesaid judgment perfected an appeal therefrom to the Circuit Court of Appeals for the Seventh Circuit. On May 22, 1941, said Circuit Court of Appeals filed its opinion in which it affirmed said judgment and, on July 2, 1941, it denied defendants' petition for a rehearing.

3. On July 15, 1941, the defendants to the above entitled cause presented to this Court their motion to extend until the further order of the Court the time within which they should answer, plead, move for a bill of particulars or otherwise move in respect of the amended complaint herein, and

in support thereof represented to the Court that it was their bona fide intention to make application to the Supreme Court of the United States for a writ of certiorari to review said judgment of the Circuit Court of Appeals. On the same day, this Court entered its order allowing the aforesaid motion of these defendants.

4. On August 6, 1941, these defendants filed with the Supreme Court of the United States their petition for a writ of certiorari to review said judgment of the Circuit Court of Appeals and, on October 13, 1941, said petition was denied. Thereafter on October 29, 1941, these defendants filed with the Supreme Court their petition for a rehearing on said petition for a writ of certiorari, and on November 10, 1941, said petition for a rehearing was denied.

5. Subsequent to the action of the Supreme Court in denying said petition for a rehearing, counsel for these defendants have caused a legal research to be made for the purpose of ascertaining the extent, if any, to which the [fol. 284] issues in this equity case are controlled by the judgment in the aforesaid criminal proceeding. Said research has not been completed and in the opinion of counsel for these defendants cannot reasonably be completed prior to January 1, 1942. Unusual and difficult legal problems have arisen concerning the legal effect of the judgment in said criminal proceeding, due particularly to the fact that this equity case charges violations of statutes not involved in said criminal proceeding and contains somewhat altered allegations as to the supposed conduct alleged to be in violation of the statute involved in said criminal proceeding. Until counsel for these defendants have made a thorough investigation of the pertinent decisions with respect to said problems, it will be impossible for them to determine the nature and substance of the motion or pleading that should be filed herein by these defendants.

6. Defendants represent that, because of the importance of this case not only with respect to the immediate parties hereto but also with respect to threatened civil actions brought by private litigants based upon the supposed statutory violations involved herein (one of which actions has already been instituted in this Court), it is necessary for both parties to make a thorough analysis of the issues presented by the amended complaint herein and a thorough

study of the applicable law before proceeding further herein. Defendants further represent that, because of the complexities of this case, it will be impossible for them adequately to prepare, serve and file their answer, pleading or [fol. 285] motion directed to the amended complaint herein, or motion for a bill of particulars prior to January 31, 1942.

E. S. Ballard, Herbert Pope, John Thomas Smith,
Henry M. Hogan, Attorneys for Defendants.

STATE OF ILLINOIS,
County of Cook, ss:

ERNEST S. BALLARD, being first duly sworn, deposes and says that he is one of the attorneys of record for the defendants herein; that he has read the foregoing motion, knows the contents thereof and that the same is true.

E. S. Ballard.

Subscribed and Sworn to before me this 28th day of November, 1941. Frances C. Robertson, Notary Public. My commission expires April 18, 1942. (Seal.)

[fol. 286] UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

I, Hoyt King, Clerk of the United States District Court in and for the Northern District of Illinois, do hereby certify that the annexed and foregoing is a true and full copy of the original Motion to Extend Time to Answer, Plead or Move in Respect of the Amended Complaint, filed December 2, 1941, in the Case of United States of America, Plaintiff, vs. General Motors Corporation, General Motors Acceptance Corporation and General Motor Sales Corporation, Defendants, No. 2177, now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 15th day of December, A. D. 1941.

Hoyt King, Clerk, by Edward E. Douglas, Deputy Clerk.

(Here follows 1 photolithograph, side folio 247)

United States District Court, Northern District of Illinois

Case No. CIVIL NO. 2177

(Date) December 2, 1941

of Cause UNITED STATES OF AMERICA, Plaintiff vs.

GENERAL MOTORS CORPORATION, GENERAL MOTORS
ACCEPTANCE CORPORATION and GENERAL MOTORS
SALES CORPORATION, Defendants.

Statement
of Motion

Motion to extend to and including January 31,
1942, defendants' time for answer, pleading,
motion for bill of particulars or other motion
with respect to amended complaint.

Name of moving
Counsel

Ernest S. Ballard

presenting

Defendants

Name of opposing
counsel (if any)

Enter order

Draft

and this memorandum to the Clerk. .
counsel will not rise to address the Court until motion has been called.

[fols. 288-289] IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Civil No. 2177

UNITED STATES OF AMERICA, Plaintiff,

VS.

GENERAL MOTORS CORPORATION, GENERAL MOTORS ACCEPT-
ANCE CORPORATION and General Motor Sales Corporation,
Defendants

Order

This matter coming on to be heard upon the motion of defendants for an extension of time within which to answer, plead, move for a bill of particulars or otherwise move in respect of the amended complaint and the Court having heard the arguments of counsel and being fully advised in the premises,

It Is Ordered that the time of the several defendants to answer, plead, move for a bill of particulars or otherwise move in respect of the amended complaint, and the time within which they shall serve any such answer, pleading or motion, be and the same is hereby extended to and including January 15, 1942.

Enter:

Holly, District Judge.

December 2, 1941.

Clerk's Certificate to foregoing paper omitted in printing.

[fol. 290] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER CONTINUING HEARING

This matter came on to be heard by the Court on motion of the United States for modification of the modified final decree and the Court having heard argument of counsel and the Government having introduced its evidence and the defendants having requested a continuance in order to produce further evidence—

It is Ordered that the Hearing be and the same is hereby continued until the 16th day of February 1942.

It is further Ordered that pending the final disposition of the Government's motion the provisions of the decree enjoining Chrysler Corporation from acquiring an interest in a finance company shall remain in full force and effect, notwithstanding Paragraph 12 of said decree.

All of this is now Ordered, Adjudged and Decreed this 22nd day of December, 1941. Defendants granted Exception.

Thos. W. Slick, Judge of the United States District Court for the Northern District of Indiana.

[fol. 291]. IN UNITED STATES DISTRICT COURT

MINUTES OF HEARING

And afterwards, to wit: On the 16th day of February, 1942, the following further proceedings were had herein, to-wit:

Comes now the United States of America, plaintiff herein, by Mr. Holmes Baldridge, Special Assistant to the Attorney General, and also by Luther M. Swygert and James E. Keating, Assistants to the United States Attorney for the Northern District of Indiana, and comes also the defendants Chrysler Corporation, De Soto Motor Corporation, Plymouth Motor Corporation, Dodge Brothers Corporation, and Chrysler Sales Corporation by Theodore Iserman, S. J. Crumpacker, William Stanley, and William D. Donnelly, their attorneys, and this cause coming on further to be heard on the motion of the plaintiff for modification of the modified final decree herein, and

There being no evidence offered before the Court on this date, but arguments of counsel are heard, and now the Court having heard said arguments of counsel now finds the facts herein specially and states its conclusions of law thereon, which findings of fact and conclusions of law are in the words and figures following, to-wit:

[fol. 292] IN THE DISTRICT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF INDIANA, SOUTH BEND DIVI-
SION

Civil No. 9

UNITED STATES OF AMERICA, Complainant,

v.

CHRYSLER CORPORATION, et al., Defendants

FINDINGS OF FACT AND CONCLUSIONS OF LAW—February 16,
1942

The Court makes the following findings of fact:

1. That jurisdiction was specifically retained in this Court for the purpose of enforcing compliance with the decree, or for the purpose of modifying the decree upon proper showing:

2. That this Court has jurisdiction to hear and dispose of the subject matter of complainant's motion.

3. That the provisions of Sec. 12 of the consent decree for which modification is sought were framed upon the basis that the ultimate rights of the parties thereunder should be determined by the Government's civil antitrust proceedings against General Motors Corporation and affiliated companies.

4. That time was not of the essence with respect to lapse of the bar against affiliation.

5. That to safeguard defendants against undue delay in such proceedings the decree provided for suspension of certain of its prohibitions in the event convictions were not obtained in the criminal case against General Motors Corporation by January 1, 1940.

6. That the decree provided for a termination of the bar against affiliation, if the civil proceedings against General Motors Corporation were not successfully concluded by a [fol. 293] court of last resort by January 1, 1941.

7. That the Court takes judicial notice of the fact that convictions were obtained in the criminal proceedings against General Motors Corporation, et al. on November 17, 1939.

8. That the Government has proceeded diligently and expeditiously in its suit to divorce General Motors Acceptance Corporation from General Motors Corporation.

9. That further extension of the bar against affiliation will not impose a serious burden upon defendants.

The Court rules as a matter of law:

1. That the order of this Court dated December 21, 1940, modifying the decree, so as to extend to January 1, 1942, the bar against affiliation, became the law only of the first petition for extension in the case, since the Supreme Court was unable to muster a quorum to hear the matter on appeal.

2. That the Court has jurisdiction to entertain complainant's motion and to make a proper order pursuant thereto.

3. That the purpose and intent of the decree will be carried out if Chrysler is given the opportunity at any future time to propose a plan for the acquisition of a finance company, and to make a showing that such plan is necessary to prevent Chrysler Corporation from being put at a competitive disadvantage during the pendency of complainant's civil litigation against General Motors Corporation, et al.

Dated this 16th day of February, 1942.

Thos. W. Slick, Judge, United States District Court,
Northern District of Indiana.

[fol. 294] IN THE DISTRICT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF INDIANA, SOUTH BEND DIVISION

Civil No. 9

UNITED STATES OF AMERICA, Complainant,

v.

CHRYSLER CORPORATION, ET AL., Defendants

FINAL DECREE—IN MODIFICATION OF FINAL DECREE AS MODIFIED—Feb. 16, 1942

This matter came on to be heard by the Court on a motion of the United States for modification of the final decree

as modified, and the Court having heard argument of counsel and having considered the matter, and it having appeared to the Court that the allowance of such motion is just and equitable,

Now, Therefore, It Is Ordered, Adjudicated and Decreed that the aforesaid final decree as amended shall be and is hereby modified so that the second paragraph of section 12 thereof shall read as follows:

It is an express condition of this decree that notwithstanding the provisions of the preceding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1943 requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a. The Court, upon application of the respondents or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted.

[fol. 295] And It Is Further Ordered, Adjudicated and Decreed that except as thus modified the modified decree as previously entered shall stand in full force and effect.

By the Court:

Thos. W. Slick, Judge.

Dated: February 16, 1942.

[fols. 296-297] IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF INDIANA, SOUTH BEND DI-
VISION

[Title omitted]

PETITION FOR APPEAL—Filed Feb. 18, 1942

Now come petitioners, Chrysler Corporation, De Soto Motor Corporation, Plymouth Motor Corporation, Dodge

Brothers Corporation and Chrysler Sales Corporation and considering themselves aggrieved by the Final Decree—In Modification of Final Decree as Modified made an entered on February 16, 1942, in this Court in the above entitled cause, pray that an appeal be allowed to the Supreme Court of the United States. The particulars wherein said petitioners consider the Final Decree in Modification erroneous are set forth in their Assignment of Errors which is filed herewith.

Wherefore, your petitioners pray that an appeal may be allowed in their behalf to the Supreme Court of the United States for the correction of the errors so complained of and that a transcript of the record, proceedings and papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

Parker, Crabill, Crumpacker, May, Carlisle & Beamer, Larkin, Rathbone & Perry, William Stanley, (S.) William D. Donnelly, Attorneys for Defendants, Chrysler Corporation, De Soto Motor Corporation, Plymouth Motor Corporation, Dodge Brothers Corporation and Chrysler Sales Corporation.

[fol. 298] IN THE DISTRICT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF INDIANA, SOUTH BEND DIVISION

[Title omitted]

ASSIGNMENT OF ERRORS—Filed Feb. 18, 1942

Now come Chrysler Corporation, De Soto Motor Corporation, Plymouth Motor Corporation, Dodge Brothers Corporation and Chrysler Sales Corporation, the appellants herein, and file the following Assignment of Errors upon which they will rely in the prosecution of the appeal herewith petitioned for in said cause to the Supreme Court of the United States from the Final Decree—In Modification of Final Decree as Modified of this Court entered on the 16th day of February, 1942.

The District Court erred:

1. In finding (Finding No. 3) "that the provisions of Section 12 of the consent decree from which modification is sought were framed upon the basis that the ultimate rights

of the parties thereunder should be determined by the Government's civil antitrust proceedings against General Motors Corporation and affiliated companies", contrary to the express language of Section 12 of the original consent decree, and in the complete absence from the record of any evidence to support such finding.

2. In finding (Finding No. 4) "that time was not of the essence with respect to lapse of the bar against affiliation", contrary to the express language of Section 12 of the original consent decree, and without any evidence in the record to support such finding.

[fol. 299] 3. In finding (Finding No. 8) "that the Government has proceeded diligently and expeditiously in its suit to divorce General Motors Acceptance Corporation from General Motors Corporation", upon evidence clearly disclosing undue delay by the plaintiff.

4. In finding (Finding No. 9) "that further extension of the bar against affiliation will not impose a serious burden upon defendants", contrary to the recognition of the fact of such burden by both parties in fixing the terms of the consent decree, and in the complete absence of any evidence in the record to support such finding.

5. In concluding as a matter of law (Conclusion No. 1) that the order entered December 21, 1940, became the law of the first petition for extension in the case, insofar as such conclusion involves a holding that the determination of questions of law upon which that order was based are binding in the present decision on the plaintiff's motion for Modification of the Final Decree and of the Final Decree as Modified, and are not now subject to reconsideration or review.

6. In concluding as a matter of law (Conclusion No. 2) that the court may in the exercise of its equity jurisdiction, and pursuant to plaintiff's mere motion, properly make an order for injunctive restraint of defendants, without requiring any evidence in support of the allegations upon which the motion founds plaintiff's right to such restraint.

7. In concluding as a matter of law (Conclusion No. 3) "that the purpose and intent of the decree will be carried out if Chrysler is given the opportunity at any future time to propose a plan for the acquisition of a finance company,

and to make a showing that such plan is necessary to prevent Chrysler Corporation from being put at a competitive disadvantage during the pendency of complainant's civil litigation against General Motors Corporation, et al.', in disregard of the express and unambiguous provisions, particularly Section 12, of the original consent decree, upon findings supported by no evidence, and without requiring the plaintiff to produce any evidence in support of its allegations as to purpose and intent denied by the answer.

8. In impliedly holding as a matter of law that after entry of a consent decree barring affiliation of the defendants with a finance company for a definitely fixed period, a court may [fol. 300] — without proof of the affirmative allegations in support of the motion and denied by the answer, and without the consent of the parties—nevertheless further extend the bar against affiliation by an injunctive order upon a finding that to do so will not impose a serious burden upon defendants.

9. In modifying the Final Decree—In Modification, without requiring evidence in support of the allegations contained in plaintiff's motion and controverted in defendants' answer.

10. In failing and refusing to dismiss plaintiff's Motion for Modification of the Final Decree and of the Final Decree as Modified, for failure of the plaintiff to allege or prove facts sufficient to entitle the plaintiff to the relief it sought by said motion.

11. In enjoining the defendants from acquiring and retaining ownership of, or control over, or interest in, any finance company until after January 1, 1943.

12. In failing to hold that defendants, on and after January 1, 1941, pursuant to the terms of the original consent decree, and on and after January 1, 1942, pursuant to the terms of the Final Decree—In Modification, were and are no longer precluded from acquiring and retaining ownership of and/or control over, or interest in any finance company or from dealing with such finance company and with defendants' dealers in the manner provided in said original consent decree.

13. In modifying the consent decree without acquiescence of the parties.

14. In rendering the Final Decree—In Modification of Final Decree as Modified, filed and entered herein in the District Court of the United States for the Northern District of Indiana, South Bend Division, on February 16th, 1942, wherein said court modified Section 12 of said consent decree, dated November 15, 1938.

PRAYER FOR REVERSAL

For which errors the defendants, Chrysler Corporation, De Soto Motor Corporation, Plymouth Motor Corporation, [fol. 301] Dodge Brothers Corporation and Chrysler Sales Corporation, pray that the said decree of the District Court of the United States for the Northern District of Indiana, entered February 16, 1942, in the above entitled cause, be reversed and the petition dismissed; that the amount of the cost bond to be given by appellants be fixed; that citation issue to the appellee named above; and for such other and further relief to which appellants may be entitled.

Respectfully submitted, Parker, Crabill, Crumpacker, May, Carlisle & Beamer, Larkin, Rathbone & Perry, William Stanley, (S.) William D. Donnelly, Attorneys for Appellants.

[fol. 302] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF INDIANA, SOUTH BEND DIVISION

No. 9

CHRYSLER CORPORATION, DESOTO MOTOR CORPORATION, PLYMOUTH MOTOR CORPORATION, DODGE BROTHERS CORPORATION, AND CHRYSLER SALES CORPORATION, APPELLANTS,

v.

UNITED STATES OF AMERICA, Appellee

ORDER ALLOWING APPEAL—Filed Feb. 18, 1942

The appellants in the above entitled case and each of them, have prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the decree made and entered in the above entitled case by the

District Court of the United States for the Northern District of Indiana on the sixteenth day of February, 1942, and from each and every part thereof, and have presented and filed their petition for appeal, assignment of errors, prayer for reversal, and statement as to jurisdiction pursuant to the statutes of the United States and the Rules of the Supreme Court of the United States in such cases made and provided:

It is now ordered that an appeal be and the same is hereby allowed to the Supreme Court of the United States from the District Court of the United States for the Northern District of Indiana in the above entitled cause as provided by law, and

[fol. 303] It is further ordered that the Clerk of the United States District Court for the Northern District of Indiana shall prepare and certify a transcript of the record, proceedings, and decree in this cause and transmit the same to the Supreme Court of the United States so that he shall have the same in said Court within forty (40) days of this date, and

It is further ordered that security for costs on appeal be fixed in the sum of Five Hundred Dollars (\$500.00).

Dated February 18, 1942.

(S.) Thos. W. Sick, United States District Judge for the Northern District of Indiana.

[fol. 304] Bond on Appeal for \$500.00, approved and filed Feb. 18, 1942, omitted in printing.

[fols. 305-307] Citation in usual form showing service on United States Attorney, filed Feb. 18, 1942, omitted in printing.

[fol. 308] IN THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF INDIANA, HAMMOND DIVISION

[Title omitted]

STIPULATION AS TO TRANSCRIPT OF RECORD—Filed March 12, 1942

It is hereby stipulated by and between plaintiff, United States of America, by its attorney, Holmes Baldrige, and

the defendants, Chrysler Corporation, DeSoto Motor Corporation, Plymouth Motor Corporation, Dodge Brothers Corporation and Chrysler Sales Corporation, by their attorney William D. Donnelly, that the Transcript of Record in the above-entitled case to be filed in the Supreme Court of the United States shall not include the official court stenographer's transcript of the proceedings held on December 22, 1941, and on February 16, 1942, on the Motion for Modification of the Final Decree and of the Final Decree as Modified. Accordingly, it is agreed that the Praecipe for Transcript of Record, filed by the defendants on February 18, 1942, be corrected by striking therefrom Item 18 contained therein.

Dated at Washington, D. C., this 11th day of March, 1942.

Holmes Baldrige, Attorney for Plaintiff, United States of America. William D. Donnelly, Attorney for Defendants, Chrysler Corporation, et al.

[fol. 309] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF INDIANA, SOUTH BEND DIVISION

[Title omitted].

PRAECIPE FOR TRANSCRIPT OF RECORD—Filed Feb. 18, 1942

SIR:

You are hereby requested to make a transcript of record to be filed in the Supreme Court of the United States, pursuant to an appeal allowed in the above entitled cause and to include in such transcript of record the following, and no other papers, to wit:

1. Complaint, filed herein on November 7, 1938;
2. Answer of defendants Chrysler Corporation, DeSoto Motor Corporation, Plymouth Motor Corporation, Dodge Brothers Corporation, and Chrysler Sales Corporation to said complaint, together with acknowledgement of service on November 7, 1938;
3. Final decree herein dated November 15, 1938;
4. Plaintiff's notice of motion and hearing thereon dated December 17, 1940;
5. Order for hearing dated December 17, 1940;

6. Plaintiff's motion for modification of final decree entered herein on December 21, 1940;

7. Affidavit in support of motion for modification of final decree entered herein on December 21, 1940;

8. Answer of Chrysler Corporation, DeSoto Motor Corporation, Plymouth Motor Corporation, Dodge Brothers Corporation, and Chrysler Sales Corporation to motion for modification of final decree, filed herein on December 21, 1940;

[fol. 310] 9. Affidavit in support of answer of Chrysler Corporation, DeSoto Motor Corporation, Plymouth Motor Corporation, Dodge Brothers Corporation, and Chrysler Sales Corporation to motion for modification of final decree, filed herein on December 21, 1940;

10. Final decree in modification entered herein on December 21, 1940;

11. Plaintiff's notice of motion for modification of final decree and final decree as modified and hearing thereon;

12. Plaintiff's affidavit of service of notice for hearing filed December 22, 1941;

13. Order for hearing dated December 17, 1941;

14. Plaintiff's motion for modification of the final decree and of the final decree as modified, filed herein on December 15, 1941;

15. Affidavit in support of motion for modification of the final decree and of the final decree as modified, filed herein on December 15, 1941;

16. Answer of Chrysler Corporation, DeSoto Motor Corporation, Plymouth Motor Corporation, Dodge Brothers Corporation, and Chrysler Sales Corporation to motion for modification of final decree and of the final decree as modified, filed herein on December 22, 1941;

17. Affidavit in support of answer of Chrysler Corporation, DeSoto Motor Corporation, Plymouth Motor Corporation, Dodge Brothers Corporation, and Chrysler Sales Corporation to motion for modification of final decree, filed herein on December 22, 1941;

18. The official court stenographer's transcript of the proceedings held on the motion for modification of the final decree and of the final decree as modified on December 22, 1941, and on February 16, 1942;

19. Transcript of all evidence adduced at the proceedings held on the motion for modification of the final decree

and of the final decree as modified on December 22, 1941, and on February 16, 1942;

20. Order entered herein on December 22, 1941;

[fol. 311] 21. Findings of fact and conclusions of law dated February 16, 1942;

22. Final Decree—In Modification of Final Decree as Modified entered herein on February 16, 1942;

23. Petition for appeal filed herein on the 18th day of February, 1942;

24. Assignment of errors accompanying said petition for appeal filed herein on the 18th day of February, 1942;

25. Statement as to the jurisdiction of the Supreme Court of the United States accompanying the petition for appeal filed herein on the 18th day of February, 1942;

26. Order allowing said appeal and fixing the amount of the bond on appeal filed herein on the 16th day of February, 1942;

27. The appeal bond filed herein on the 18th day of February, 1942; and approved on the 18th day of February, 1942;

28. Citation and the acknowledgement of service thereof filed herein on the 18th day of February, 1942;

29. Notice of allowance of appeal, enclosing the appeal papers herein, and statement directing attention to the provisions of paragraph 3 of Rule No. 12 of the Rules of the Supreme Court of the United States, together with acknowledgement of service thereof;

30. This praecipe and acknowledgement of service thereof.

Said transcript to be prepared as required by law and the rules of this Court and the rules of the Supreme Court of the United States and to be filed in the office of the Clerk of the Supreme Court of the United States on or before the 30th day of March, 1942.

Dated: February 18, 1942.

—, Attorneys for Appellants Chrysler Corporation, DeSoto Motor Corporation, Plymouth Motor Corporation, Dodge Brothers Corporation, and Chrysler Sales Corporation.

[fol. 312] Service of the above praecipe accepted and acknowledged, this — day of —, 194—.

—, Attorney for Appellee.

To: Miss Margaret Long, Clerk, United States District Court for the Northern District of Indiana.

[fol. 313] IN UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF INDIANA

CLERK'S CERTIFICATE

I, Margaret Long, Clerk of the United States District Court in and for the Northern District of Indiana, do hereby certify that the annexed and foregoing is a true and full copy of the original pleadings and proceedings in Cause numbered 9, Civil, entitled "United States of America vs. Chrysler Corporation, et al.," as required by the foregoing praecipe for transcript.

I do further certify that the original exhibits included in said transcript constitute all of the evidence introduced at the hearings on the motion for modification of the final decree and of the final decree as modified, held on December 21st, 1941 and February 16th, 1942; now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at South Bend, this 12th day of March, A. D. 1942.

Margaret Long, Clerk, by ———, Deputy Clerk.
(Seal.)

[fol. 314] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1941

No. 1036

ORDER NOTING PROBABLE JURISDICTION—March 16, 1942

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

[fol. 315] IN SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1941

No. 1036

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF THE PARTS OF THE RECORD TO BE PRINTED—Filed March 19, 1942

Come now the Appellants in the above entitled cause, the Chrysler Corporation, DeSoto Motor Corporation,

Plymouth Motor Corporation, Dodge Brothers Corporation, and Chrysler Sales Corporation, and adopt as their statement of points upon which they intend to rely in this Court in this case, their assignment of errors filed with the Clerk of the District Court for the Northern District of Indiana and by her included in the transcript of the record transmitted to this Court.

Appellants further state that only the following parts of the record as filed in this Court need be printed by the Clerk for the hearing of the case:

Complaint.

Answer of defendants, Chrysler Corporation, et al.

Final decree.

Motion for modification of final decree.

Affidavit of Edmond J. Ford.

Answer of defendants, Chrysler Corporation, et al.

Affidavit of William Stanley.

Order of modification of final decree, December 21, 1940.

[fol. 316] Plaintiff's notice of motion for modification of final decree and final decree as modified and hearing thereon.

Order for hearing on motion for modification of final decree and final decree as modified.

Motion for modification of the final decree and of the final decree as modified.

Affidavit of Edmond J. Ford.

Answer of defendants, Chrysler Corporation, et al., to motion for modification of the final decree and of the final decree as modified.

Affidavit of William Stanley.

Transcript of all evidence adduced at the proceedings held on the motion for modification of the final decree and of the final decree as modified.

Order entered December 22, 1941.

Findings of fact and conclusions of law.

Final decree—In Modification of Final Decree as Modified.

Petition for appeal.

Assignment of errors.

Order allowing appeal.

Praecipe for transcript of record on appeal.

Stipulation as to praecipe.

Clerk's certificate.

Dated: —, —, —

Nicholas Kelley, William Stanley, Attorneys for Appellants. William D. Donnelly.

Service by Appellants of the above Statement of Points to be Relied Upon and Designation of the Parts of the Record to be Printed is hereby acknowledged by Appellee, this 18th day of March, 1942, and Appellee hereby waives its right under Rule 13 to designate additional parts of the record to be printed.

Charles Fahy, Solicitor General.

[fol. 317] [File endorsement omitted.]

Endorsed on Cover: File No. 46,364, N. Indiana, D. C. U. S., Term No. 1036. Chrysler Corporation, De Soto Motor Corporation, Plymouth Motor Corporation, Dodge Brothers Corporation and Chrysler Sales Corporation, Appellants, vs. The United States of America. Filed March 13, 1942. Term No. 1036 O. T. 1941.

(9500)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 1036

CHRYSLER CORPORATION, DE SOTO MOTOR CORPORATION, PLYMOUTH MOTOR CORPORATION, DODGE BROTHERS CORPORATION AND CHRYSLER SALES CORPORATION,

Appellants,

vs.

THE UNITED STATES OF AMERICA

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF INDIANA.

STATEMENT-AS TO JURISDICTION.

WILLIAM STANLEY,
WILLIAM D. DONNELLY,
Counsel for Appellants.

PARKER, CRABILL, CRUMPACKER,
MAY, CARLISLE & BEAMER,
LARKIN, RATHBONE & PERRY,
Of Counsel.

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2

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF INDIANA,
SOUTH BEND DIVISION

1

Civil No. 9

UNITED STATES OF AMERICA,

vs.

Plaintiff,

CHRYSLER CORPORATION, ET AL.,

Defendants..

STATEMENT AS TO JURISDICTION.

In compliance with Rule 12 of the Supreme Court of the United States, as amended, Chrysler Corporation, DeSoto Motor Corporation, Plymouth Motor Corporation, Dodge Brothers Corporation and Chrysler Sales Corporation (hereinafter referred to as the appellants or the "Manufacturer") submit herewith their statement showing the basis of the jurisdiction of the Supreme Court to entertain an appeal in this case.

The basic question involves the authority of the trial court to modify an anti-trust consent decree over the objection of the defendants.

A. Jurisdiction Statute.

The statutory provisions that confer jurisdiction upon the Supreme Court to review the decree of the District

Court upon direct appeal are Section 2 of the Expediting Act of February 11, 1903, 32 Stat. 823, as amended, 15 U. S. C., Sec. 29 and Section 238 of the Judicial Code, as amended, 28 U. S. C., Sec. 345. The direct appeal provided by these statutes is the sole mode of review available to appellants. The following cases sustain the jurisdiction of the Supreme Court:

Swift & Co. v. United States, 276 U. S. 311, 323;

United States v. California Co-op. Canneries, 279 U. S. 553, 558;

United States v. Swift & Co., 286 U. S. 106, 109;

Ethyl Gasoline Corp. v. United States, 309 U. S. 436.

B. Dates of Decree and Petition for Appeal.

The date of the final decree of the District Court here sought to be reviewed is February 16, 1942. It reads as follows:

"FINAL DECREE—IN MODIFICATION OF FINAL DECREE AS MODIFIED.

This matter came on to be heard by the Court on a motion of the United States for modification of the final decree as modified, and the Court having heard argument of counsel and having considered the matter, and it having appeared to the Court that the allowance of such motion is just and equitable,

NOW, THEREFORE, IT IS ORDERED, ADJUDICATED AND DECREED that the aforesaid final decree as amended shall be and is hereby modified so that the second paragraph of section 12 thereof shall read as follows:

It is an express condition of this decree that notwithstanding the provisions of the preceding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1943 requiring

General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a. The Court, upon application of the respondents or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted.

7 AND IT IS FURTHER ORDERED, ADJUDICATED AND DECREED that except as thus modified the modified decree as previously entered shall stand in full force and effect.

BY THE COURT: Thos. W. Slick."

Petition for allowance of appeal was presented on February 18, 1942, to Honorable Thomas W. Slick, United States District Judge for the Northern District of Indiana, and by him allowed that day.

Statement.

This is an appeal from a final decree of the District Court of the United States for the Northern District of Indiana, South Bend Division, modifying an earlier final decree which had been entered with the consent of the parties in a suit in equity brought by the United States under Section 4 of the Sherman Anti-Trust Act of July 2, 1890, c. 647, 26 Stat. 209, as amended, 15 U. S. C. Sec. 4. The consent decree that the District Court thus attempted to modify restrained appellants, among other things, from acquiring any interest in any finance company, subject; how-

ever, to the condition that, if an effective final order should not have been entered before January 1, 1941, similarly requiring General Motors Corporation to divest itself of ownership of General Motors Acceptance Corporation, then nothing in the consent decree should preclude the Manufacturer from acquiring an interest in a finance company (See pp. 19-20 of the decree). The District Court by a "Final Decree—In Modification" entered December 21, 1940, extended the period of conditional restraint from January 1, 1941, to January 1, 1942, by changing the date in one paragraph of the original decree. The Supreme Court on December 8, 1941, dismissed the appeal from that decree "for want of a quorum of Justices qualified to sit", and on January 5, 1942, denied petition for rehearing.

The second modifying decree, from which this appeal is taken, has again extended the period of conditional restraint to January 1, 1943, by another change of date.

The pertinent facts may be briefly stated:

Original proceedings.—On November 7, 1938, in the United States Court for the Northern District of Indiana, South Bend Division, the United States filed its complaint in equity against the Manufacturer, appellant herein, and against the Commercial Credit Company and certain wholly-owned subsidiaries of the Commercial Credit Company. The bill, under Section 1 of the Sherman Act, alleged that Chrysler Corporation, together with these finance companies, had conspired to exclude all other finance companies from financing the sale of automobiles. The bill prayed, among other things, that Chrysler Corporation be restrained "from acquiring in any way an interest in any finance company or by gift, loan or otherwise rendering financial assistance to any finance company".

On the same day that the bill and answer filed there was submitted to the court a proposed consent decree, which was

entered as the final decree of the court on November 15, 1938. Among other restraints and requirements imposed upon the defendant motor companies, the decree provided in Section 12:

The Manufacturer shall not make any loan to or purchase the securities of Respondent Finance Company [that is, the Commercial Credit Company and its subsidiaries] or any other finance company . . .

However, it was also provided, in the next paragraph of the same section that:

It is an express condition of this decree that notwithstanding the provisions of the preceding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1941, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a.

Proceedings against General Motors.—The United States had originally obtained three indictments—one against appellants herein and the finance companies with which it had been dealing, one against the Ford Motor Company and certain finance companies with which it had been dealing, and one against General Motors Corporation and its wholly owned finance company. Appellants herein consented to the equity decree quoted last above and the Ford Motor Company also consented to a similar decree, but General

Motors declined. Accordingly, the Government quashed the indictments against Chrysler and Ford, and Section 12 of the Chrysler consent decree and the corresponding section of the Ford decree were designed to protect them against prolonged disadvantage in competition with the non-consenting General Motors Corporation.

Subsequently in the criminal proceeding against General Motors on the indictment mentioned above the jury returned verdicts of guilty against General Motors Corporation and General Motors Acceptance Corporation; the court imposed sentence on November 17, 1939; the Circuit Court of Appeals for the Seventh Circuit affirmed, 121 F. 2d 376; the Supreme Court denied petition for certiorari October 13, 1942, and denied petition for rehearing November 10, 1942, No. 352, October Term, 1941.

Notwithstanding the express condition of the decree against appellants, the United States waited more than twenty months before it filed its bill in equity against General Motors Corporation and General Motors Acceptance Corporation to compel General Motors to divest itself of the Acceptance Corporation. Not until October 4, 1940, less than three months before the expiration of the period within which the United States had agreed to secure a decree against General Motors or release appellants from the restraint of Section 12, did the United States file its bill in equity in the District Court of the United States for the Northern District of Illinois, Eastern Division, seeking the result upon which continued restraint of appellants under Section 12 was predicated.

First motion and decree for modification.—On December 17, 1940, the United States filed its "motion" for modification of the consent decree praying that in the second paragraph of Section 12 of the decree (as quoted above), the date "January 1, 1942" be substituted for "January 1, 1941".

The answer of appellants denied the allegations of the motion of the United States and prayed that the motion be dismissed or, if not dismissed, that plaintiff be required to plead or elect with particularity the ground upon which it relied, and finally that defendants be given sufficient notice and opportunity to prepare its response and defense.

The motion was heard December 21, 1940. Despite the fact that the Government had the burden of proof and that there was no waiver of proof by appellants, the Government submitted no evidence. The attorney for the Government, pressed to state the ground of his motion, merely stated "I am relying on the good judgment of the court". The court on the same day, December 21, 1940, made its "Final Decree—in Modification" directing the changing of the date in the second paragraph of Section 12 of the decree of "January 1, 1942" as requested by the Government. Appeal was allowed by the trial court but on December 8, 1941, was dismissed by the Supreme Court "for want of a quorum of Justices qualified to sit". Petition for rehearing was denied January 5, 1942.

Present proceeding. Motion for Modification of the Final Decree and of the Final Decree as Modified.—On December 15, 1941, the United States filed in the United States District Court for the Northern District of Indiana a new motion, a "Motion for Modification of the Final Decree and of the Final Decree as Modified". This new motion prays that the restraint contained in Section 12 of the decree be extended for an additional year to January 1, 1943, i. e., that the restriction to which appellants gave their consent be extended without their consent and over their objection for a total of two years. In substance the motion alleges that the primary purpose of the provisions of Section 12 of the consent decree was to have the right of the United States to prohibit affiliation between an automobile com-

pany and a finance company determined in the General Motors proceeding; and that a "subsidiary purpose" was to protect respondents against "undue delay". Asserting that circumstances not attributable to undue delay or laches of plaintiff have prevented conclusion of the General Motors proceedings, the motion then alleges: "The essential purposes of the decree would be defeated if . . . the prohibition against affiliation were allowed to lapse prior to final determination" of the General Motors proceeding. Attached to the motion is an affidavit by a representative of the Department of Justice as to the truth of the statements in the motion.

The answer of appellants in substance sets up as defenses: (1) Demurrer—that the motion fails to state a claim upon which relief can be granted; and (2) Denial of substantially all allegations upon which the motion was based. It prays that the motion be dismissed; or, if not dismissed, that plaintiff be required to plead with particularity any changed basic conditions of fact or law upon which it relies, and that defendants be given sufficient notice and opportunity to prepare their response and defense. Attached to the answer is the affidavit of counsel stating that he was present at substantially all of the conferences and negotiations at which the parties agreed upon the contents of the final decree and that the answer is true of his own knowledge.

Evidence.—Pursuant to order of the trial court, the case came on for hearing December 22, 1941. The first defense was overruled. Despite the fact that the Government had the burden of proof and that there was no waiver of proof by appellants, the only evidence submitted by the Government related solely to the question of undue delay or diligence of the Government in prosecuting the civil suit against General Motors Corporation and consisted merely of pleadings, motions, stipulations and orders entered in

that suit.¹ No other evidence was submitted for the Government.

Action of the trial court.—On the same day, December 22, 1941, the court entered its order providing:

• • • the Court having heard argument of counsel and the Government having introduced its evidence and the defendants having requested a continuance in order to produce further evidence—

It is Ordered that the hearing be and the same is hereby continued until the 16th day of February 1942.

It is further Ordered that pending the final disposition of the Government's motion the provisions of the decree enjoining Chrysler Corporation from acquiring an interest in a finance company shall remain in full force and effect, notwithstanding Paragraph 12 of said decree.

At the hearing on February 16, 1942, no evidence was adduced by either party. The appellants, having in the meantime determined that the evidence offered by the Government failed utterly to show any ground for the modification or extension of the consent decree, rested their case and renewed their motion that the plaintiff's motion be dismissed.

Thereupon the court made findings of fact and conclusions of law.² In accordance therewith it entered a Final Decree—In Modification of Final Decree as Modified directing the changing of the date in the second paragraph of Section 12 of the decree to "January 1, 1943" as requested by the Government. There was no opinion.

¹ From these it appears that the Government entered into a series of stipulations extending to July 15, 1941, the time for answer by the defendants in that case, and that the court thereafter extended the time in which to answer to January 15, 1942.

² The findings of fact and conclusions of law are set out in the Appendix.

Substantial Nature of the Questions Presented.

A. *The Government, as the moving party, had the burden of proof.*—The so-called motion of the United States in substance seeks modification of the decree on the ground that the purposes or intent of the parties to the consent decree are not those shown by the words of the consent decree and that the provisions of the decree must be changed to avoid defeat of the alleged “primary”, “subsidiary” and “essential” purposes and intents of the parties as stated in the motion. Since the motion seeks an extended restraint which the parties subject to the original decree oppose, it is, while ancillary in character, nevertheless in the nature of an original bill so far as that restraint is concerned. It admitted of an answer and, its allegations having been denied, required proof to be taken and the facts ascertained. *Buffington v. Harvey*, 95 U. S. 99, 107; *Pacific Railroad Co. v. Ketchum*, 101 U. S. 289, 295; *Kaw Valley Drainage District v. Union Pac. R. Co.*, 165 Fed. 836, 837. The Government, therefore, as the moving party asserting the affirmative of the issue, sustained the burden of proving all the facts necessary to establish the right to the imposition or extension of the injunction against Chrysler. *United States v. Linn*, 1 How. 104, 111; *The “Edith”*, 94 U. S. 518, 522; *Lilienthal’s Tobacco v. United States*, 97 U. S. 237, 267; *Henderson v. Carbondale Coal and Coke Co.*, 140 U. S. 25, 35.

B. *The Government in support of its allegations adduced no evidence of purpose or intent contrary to the plain meaning of the language of Section 12 of the decree.*—By the unambiguous words of the “express condition” contained in the second paragraph of Section 12 of the consent decree, the restraint against acquisition by Chrysler of ownership or control of, or interest in a finance company expired on January 1, 1941, the Government having failed to obtain before that date an effective final decree requiring General

Motors to divest itself of all ownership and control of General Motors Acceptance Corporation. Indeed, the trial court found (Finding No. 6) "that the decree provided for a termination of the bar against affiliation, if the civil proceedings against General Motors Corporation were not successfully concluded by a court of last resort by January 1, 1941."

The purpose or intent of the decree or of the parties to it is to be determined, of course, by reference to the words used. And the allegations of the motion, so far as they may be regarded as asserting a purpose or intent at variance with the provisions of the second paragraph of Section 12 of the original consent decree, are patently unfounded in view of the unequivocal language of the "express condition" to which the Government, with full knowledge of the facts freely consented.

In any event, no evidence in support of these allegations is even purported to have been offered. The affidavit of counsel, being purely *ex parte*, could not be considered as evidence on final hearing. *Cucullu v. Hernandez*, 103 U. S. 105, 110.

Despite this utter lack of proof the trial court found as a fact (Finding No. 3):

That the provisions of Sec. 12 of the consent decree
 • • • were framed upon the basis that the ultimate rights of the parties thereunder should be determined by the Government's civil antitrust proceedings against General Motors Corporation and affiliated companies.

Equally without support in the evidence is the Court's conclusion as a matter of law (Conclusions of Law, No. 3):

That the purpose and intent of the decree will be carried out if Chrysler is given the opportunity at any future time to propose a plan for the acquisition of a finance company and to make a showing that such plan

is necessary to prevent Chrysler Corporation from being put at a competitive disadvantage during the pendency of complainant's civil litigation against General Motors Corporation, et al.

Thus, the order here involved, is based upon a conclusion of the court as to the purpose and intent of the parties utterly without evidence to support it, and in direct conflict with the express provisions of the second paragraph of Section 12, which clearly negative such purpose and intent.

The question presented, therefore, is whether authority in the court to order extension of the restraint may be based on the consent or alleged purpose and intent of the parties, where such consent, alleged purpose or intent are clearly negated by the express language of the original consent decree, and where the plaintiff has introduced no evidence to show the alleged purpose or intent.

C. No Mistake of the Parties or Change in Circumstances Justifying Modification of the Consent Decree is Either Alleged or Proved.

The instant motion, in sharp and significant contrast with plaintiff's first motion for modification, omits entirely any allegation that at the time of the execution of the decree "it was then believed by the parties" that the General Motors case could be more promptly disposed of, or that the time "was by mistake of the parties underestimated", or that "the parties hereto, at the time of the entering of the consent decree, anticipated that such criminal case would be disposed of without extensive and lengthy litigation". This motion contains no allegation of mistake of the parties and the plaintiff offered proof of none.

The plaintiff's motion does allege that:

"Circumstances arising since entry of the decree
• • • have prevented bringing these proceedings to

a conclusion by the date specified in paragraph 12

But this falls far short of allegation of "new and unforeseen conditions" sufficient to justify amendment of the consent decree. The rule is stated in *United States v. Swift & Co.*, 286 U. S. 106, 119-120:

Nothing less than a clear showing of grievous wrong evoked by new and unforeseen conditions should lead us to change what was decreed after years of litigation with the consent of all concerned. . . . What was then solemnly adjudged as a final composition of an historic litigation will not lightly be undone . . . and the composition held for nothing.

Within the meaning of this rule, the failure of the Government to obtain a decree against General Motors before January 1, 1941, is obviously not a new and unforeseen condition, nor does the allegation of the motion state that it was. Indeed, the very fact that the obtaining of a decree against General Motors before January 1, 1941, is referred to in Section 12 as an "express condition" clearly shows that the parties had regard to that event and contracted with specific reference to its uncertainty, fully foreseeing the possibility that it would not occur before the stated day. If, as the theory of "changed conditions" necessarily assumes, the happening of the event before January 1, 1941 had been relied upon by the parties as a certainty, then the apparent contingency stated in the decree would have been illusory, its character as a condition would have been destroyed, and the whole of paragraph two of Section 12 would have been superfluous.

Furthermore, the fact that under the express terms of the consent decree Chrysler, by expiration of time, has become free to acquire and retain ownership of, or control over, or interest in any finance company falls far short of

the "showing of grievous wrong" set up as a prerequisite to modification in *United States v. Swift & Co.*, *supra*. Where equity jurisdiction is invoked, not to remove, but to impose a restraint, it is established that such jurisdiction will be exercised—whether by way of "modification" of an earlier consent decree or otherwise—only when a present or threatened violation of the antitrust laws is alleged and proved. *Swift and Company v. United States*, 196 U. S. 375, 396; *Standard Oil Co. v. United States*, 283 U. S. 163, 179; *Appalachian Coals, Inc. v. United States*, 288 U. S. 344, 377; *United States v. E. I. du Pont de Nemours & Co.*, 188 Fed. 127, 129, 130; *United States v. E. I. du Pont de Nemours & Co.*, 273 Fed. 869, 873; *Aluminum Co. of America v. Federal Trade Commission*, 299 Fed. 361, 363, 365, cert. denied 261 U. S. 616. The motion here includes no allegation that acquisition by Chrysler of ownership, or control of, or interest in, a finance company would constitute or threaten a violation of law. Certainly no evidence has been offered to show that defendants are presently violating or threatening to violate the antitrust laws or any other law. "A party can no more succeed upon a case proved, but not alleged, than upon a case alleged, but not proved." *Foster v. Goddard*, 1 Black 506, 518.

There is thus presented the question whether the parties not consenting, and the allegations of the motion being controverted by the answer of the defendants, the court below erred in modifying on motion the consent decree so as to extend one of its restraints where the plaintiff made no allegation or proof of changed conditions or unlawfulness under the Sherman Act.

Finally, there is presented the question whether, as a matter of law, the trial court had authority in any event to modify, without the consent of the parties, a decree entered and based upon the consent of the parties,—particularly when such modification relates to a provision of the original de-

eree which appears upon its face to have been the subject of special consideration and agreement by the Government as well as by the defendants. *United States v. International Harvester Co.*, 274 U. S. 693, 703.

Conclusion.

It is thus plain that this appeal is within the exclusive jurisdiction of the Supreme Court and involves the review of substantial errors of the trial court.

Respectfully submitted,

PARKER, CRABILL, CRUMPACKER, MAY,
CARLISLE & BEAMER,
LARKIN, RATHBONE & PERRY,
WILLIAM STANLEY,
(S.) WILLIAM D. DONNELLY,
Attorneys for Appellants.

APPENDIX

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF INDIANA,
SOUTH BEND DIVISION.**

Civil No. 9.

UNITED STATES OF AMERICA, *Complainant,*

vs.

CHRYSLER CORPORATION; ET AL., *Defendants.*

Findings of Fact and Conclusions of Law.

The Court makes the following findings of fact:

1. That jurisdiction was specifically retained in this Court for the purpose of enforcing compliance with the decree, or for the purpose of modifying the decree upon proper showing.
2. That this Court has jurisdiction to hear and dispose of the subject matter of complainant's motion.
3. That the provisions of Sec. 12 of the consent decree for which modification is sought were framed upon the basis that the ultimate rights of the parties thereunder should be determined by the Government's civil antitrust proceedings against General Motors Corporation and affiliated companies.
4. That time was not of the essence with respect to lapse of the bar against affiliation.
5. That to safeguard defendants against undue delay in such proceedings the decree provided for suspension of certain of its prohibitions in the event convictions were not obtained in the criminal case against General Motors Corporation by January 1, 1940.
6. That the decree provided for a termination of the bar against affiliation, if the civil proceedings against Gen-

eral Motors Corporation were not successfully concluded by a court of last resort by January 1, 1941.

7. That the Court takes judicial notice of the fact that convictions were obtained in the criminal proceedings against General Motors Corporation, et al. on November 17, 1939.

8. That the Government has proceeded diligently and expeditiously in its suit to divorce General Motors Acceptance Corporation from General Motors Corporation.

9. That further extension of the bar against affiliation will not impose a serious burden upon defendants.

The Court rules as a matter of law:

1. That the order of this Court dated December 21, 1940, modifying the decree, so as to extend to January 1, 1942, the bar against affiliation, became the law only of the first petition for extension in the case, since the Supreme Court was unable to muster a quorum to hear the matter on appeal.

2. That the Court has jurisdiction to entertain complainant's motion and to make a proper order pursuant thereto.

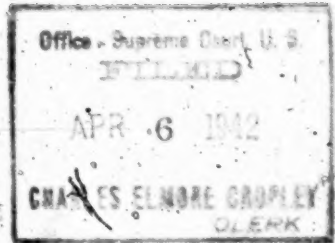
3. That the purpose and intent of the decree will be carried out if Chrysler is given the opportunity at any future time to propose a plan for the acquisition of a finance company, and to make a showing that such plan is necessary to prevent Chrysler Corporation from being put at a competitive disadvantage during the pendency of complainant's civil litigation against General Motors Corporation, et al.

Dated this 16th day of February, 1942.

THOS. W. SLICK,
Judge, United States District Court,
Northern District of Indiana.

(9320)

FILE COPY



No. 1036

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

CHRYSLER CORPORATION, DESOTO MOTOR CORPORATION, PLYMOUTH MOTOR CORPORATION, DODGE BROTHERS CORPORATION, AND CHRYSLER SALES CORPORATION,

Appellants,

vs.

THE UNITED STATES OF AMERICA

**ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF INDIANA**

BRIEF FOR THE APPELLANTS

**NICHOLAS KELLEY,
WILLIAM STANLEY,
T. R. ISERMAN,**
Counsel for Appellants.

LARKIN, RATHBONE & PERRY,
Of Counsel.

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Appellants,

vs.

THE UNITED STATES OF AMERICA

**ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF INDIANA**

BRIEF FOR THE APPELLANTS

Opinions Below.

The trial court rendered no opinion. Its findings of fact and conclusions of law appear at R. 155-156.

Jurisdiction.

The decree of the district court—in modification of final decree as modified—was entered February 16, 1942 (R. 156).

The appeal was allowed by the district judge for the Northern District of Indiana on February 18, 1942 (R. 161). The jurisdictional statement required by Rule 12 of this Court was filed March 13, 1942, and probable jurisdiction was noted on March 16, 1942 (R. 166), under the provisions of the Expediting Act of February 11, 1903, c. 544, Sec. 2, 32 Stat. 823, as amended, 15 U. S. C. Sec. 29, and Section 238 of the Judicial Code, as amended, 28 U. S. C. Sec. 345.

Question Presented.

Whether, the parties not consenting and the issues being controverted by the defendants' answer, the trial court erred in modifying an antitrust consent decree by extending one of its restraints, upon a mere assertion as to the purpose of the decree and in direct conflict with the intent plainly expressed on the face of the decree.

Statement.

This is an appeal from a final decree of the District Court of the United States for the Northern District of Indiana, South Bend Division, dated February 16, 1942, by which that court, for the second time modified an earlier final decree, dated November 15, 1938 (R. 156). The original decree (R. 24) had been entered upon the consent of the parties in a suit in equity brought by the United States under the Sherman Antitrust Act.

The original proceeding and the consent decree.—On November 7, 1938, the United States filed a bill of complaint under the Sherman Antitrust Act against Chrysler Corporation and certain of its subsidiaries (hereinafter sometimes collectively called Chrysler) (R. 1). The bill alleged, among other things, that during the three years next preceding the filing of the bill General Motors Corporation had manufactured and sold 7,000,000 automobiles

and Ford Motor Company and Chrysler each had manufactured and sold 4,000,000 automobiles (R. 5), and that these three manufacturers had conspired separately with their respective affiliated finance companies, but not with each other (R. 8). The bill prayed, among other things, that Chrysler be restrained "from acquiring in any way an interest in any finance company or by gift, loan or otherwise rendering financial assistance to any finance company" (R. 13).

On the same day, Chrysler answered the bill of complaint, denying its material allegations (R. 15), and the United States and Chrysler then consented to the entry of the decree of November 15, 1938 (R. 24). Since General Motors Corporation—the principal competitor of Chrysler—did not consent to a decree, the Government, as the face of the consent decree shows, recognized that Chrysler ought not to suffer unlimited competitive disadvantage.¹

¹ The restraining features of the decree may be briefly outlined:

Paragraph 6 restrains Chrysler from the doing of specific acts in its dealings with finance companies and dealers.

Paragraph 7 imposes restraint on Commercial Credit Company and its affiliate companies and is not pertinent here.

Paragraph 8 reserves a conditional right in the United States to proceed further against Commercial Credit.

Paragraph 9 prohibits Chrysler and Commercial Credit from doing in combination or conspiracy any act prohibited by the decree.

Paragraph 10 places the burden upon Chrysler, upon complaint by the United States of failure to comply with Paragraph 6, to establish that the acts complained of are not for a forbidden purpose.

Paragraph 11 requires defendants to mail copies of the decree to their dealers, representatives, etc.

Paragraph 12 is the section in question in this cause and is hereinafter discussed at length.

Paragraph 12a provides:

Clause (1): If the pending criminal case does not result in a judgment of conviction against G.M.C. and G.M.A.C., the whole consent decree shall be "inoperative and suspended" until by decree substantially identical restraints are imposed upon G.M.C. and G.M.A.C.

Clause (2): A general verdict and judgment in the criminal case shall be treated as a determination of the illegality of any act stated in the

The parties therefore included, in the consent decree, clauses intended to protect Chrysler both (1) against the consequences of possible failure of the Government to secure, by litigation against General Motors, restraints as broad as it had obtained from Chrysler by consent and also (2) against the consequences of delay in the civil proceedings against General Motors.

To this end the consent decree contains a number of clauses authorizing the court to relieve Chrysler of certain precisely defined restraints of the consent decree upon the happening of certain equally precisely defined conditions. It is to be noted that Paragraph 12, which the court below modified, and Paragraph 12a are entirely different sections of the decree—that is, Paragraph 12a is not a subsection of Paragraph 12. Subparagraphs (1), (2) and (3)i, (3)ii and (3)iii of Paragraph 12a deal with restraints other than the one modified by the court below. They provide that, if the criminal proceeding then pending against General Motors Corporation should result otherwise than in conviction, all of the restraints of the consent decree would be suspended until General Motors were subjected to similar restraints (R. 41); that after entry against General Motors Corporation of a

instruction to the jury to constitute a proper basis for a verdict of guilty. Such determination of illegality is to be considered as the equivalent of a decree restraining performance of such act for the purposes of clause 3 of Paragraph 12a unless such determination is based (a) upon ownership by G.M.C. of G.M.A.C. or (b) upon performance by G.M.C. of such act in combination with some act with which Chrysler was not charged in the criminal indictment against it.

Clause (3): After the entry of a decree or judgment of conviction against G.M.C. or after January 1, 1940, whichever is earliest, the court on application of Chrysler will enter orders:

Subclause (i): "suspending" the restraints imposed in Paragraph 6(d), (e), (f), (h), (i), (j), (k), (l) to the extent not imposed and until imposed on G.M.C.

Subclause (ii): "suspending" the restraint imposed in the remaining subsections of Paragraph 6 to the extent they are not imposed on G.M.C. if Chrysler shall prove that G.M.C. is performing any act prohibited to Chrysler by such remaining subsections of Section 6.

decree, or after conviction of General Motors in the criminal proceeding then pending, or after January 1, 1940, whichever occurred first, the court, upon application of Chrysler, would enter an order or orders suspending four of the restraints of Paragraph 6, and three of the restraints of Paragraph 7, of the consent decree to the extent that a final decree or its equivalent as defined in the consent decree had not imposed similar restraints upon General Motors (R. 41-42); and that the court would enter an order suspending other restraints of Paragraphs 6 and 7 if General Motors were not, by January 1, 1940, bound by a decree or its equivalent and if the appellants could prove General Motors was doing acts those restraints prohibited the appellants from doing (R. 42-43).²

Regarding the restraint of Paragraph 12, which prohibits Chrysler from having any interest in a finance company and which the court below modified, the original consent decree provided in the second paragraph of Paragraph 12 the following "express condition":

It is an express condition of this decree that notwithstanding the provisions of the preceding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1941, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in

² The criminal proceeding against General Motors resulted in conviction on November 17, 1939. As appears from the record in that case, that conviction was not based upon ownership by General Motors Corporation of General Motors Acceptance Corporation. The jury acquitted all of the individual defendants. (R. 65.) *United States v. General Motors Corporation*, 121 F. (2d) 376, cert. denied Oct. 13, 1941.

the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a. The Court, upon application of respondents or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted.

Thus, while Paragraph 12a merely suspended the restraints to which it refers upon the happening of the conditions mentioned therein, and contemplated reimposing those restraints upon the happening of still later conditions, the express condition of Paragraph 12 provided, upon the stated contingency, for the absolute termination of the restraint upon Chrysler's owning a finance company and did not provide for reimposing this restraint upon Chrysler upon some later event.

The consent decree, therefore, contains a series of express clauses for suspending or terminating the various restraints according to a number of closely defined contingencies that might arise.

The Government's first motion.—Notwithstanding the express condition of the consent decree against Chrysler, the United States waited twenty-three months before it filed its bill in equity against General Motors Corporation and General Motors Acceptance Corporation to compel General Motors to divest itself of the Acceptance Corporation (R. 60). Not until October 4, 1940, less than three months before the expiration of the period within which the United States was to secure a decree against General Motors or appellants were to be released from the restraint of Paragraph 12, did the United States file its bill in equity in the District Court of the United States for the Northern District of Illinois, Eastern Division, seeking the result upon which continued restraint of appellants under Paragraph 12 was predicated (R. 60).

On December 17, 1940, two weeks before the restraint upon Chrysler's owning a finance company was to expire, the Government moved for an order extending that restraint for one year, until January 1, 1942, upon the ground that the time "was by mistake of the parties underestimated" (R. 47-51). The Government did not allege any changed conditions of fact or law that justified extending the restraint, and did not offer evidence; and the trial court, without findings of fact or conclusions, entered a decree extending the restraints of Paragraph 12 to January 1, 1942 (R. 56-57). Appellants appealed to this Court, which heard oral argument on October 24, 1941. On December 8, 1941, the Court dismissed the appeal for "want of a quorum of justices qualified to sit," the Chief Justice and three Associate Justices being "unable to take part in the consideration or decision of these cases on the merits," and it denied the appellants' petition for rehearing on January 5, 1942.

The present motion.—On December 16, 1941, the Government moved again, asking the trial court to extend the restraint for a second year, until January 1, 1943 (R. 58-62). It based this request on an assertion that the purpose of the express condition of Paragraph 12 of the consent decree was to make the restraint upon Chrysler abide the event of the civil suit against General Motors (R. 59). The motion was returnable on December 22, 1941 (R. 58). The district court heard argument on the motion on that day (R. 67-68). The Government offered as its only evidence (R. 166) copies of papers filed in the civil suit against General Motors Corporation in the United States District Court for the Northern District of Indiana (R. 68-153). These proved only that the Government had not, as required by the express condition of Paragraph 12 of the consent decree, obtained a civil decree against General

Motors and, as a matter of fact, had not even joined issue in those proceedings (R. 153).

After taking this evidence and hearing argument, the trial judge adjourned the hearing to February 16, 1942 (R. 153-154). On that day the Government did not offer further evidence; and, the Government's evidence at the earlier hearing not having created any issue of fact, appellants did not offer evidence (R. 154). The judge thereupon made findings of fact and conclusions of law (R. 155-156) and entered the decree, now on appeal, extending the restraint of Paragraph 12 against Chrysler until January 1, 1943 (R. 156-157).

Specification of Errors.

The court below erred (R. 158-161):

1. In finding (Finding No. 3) "that the provisions of [Paragraph] 12 of the consent decree from which modification is sought were framed upon the basis that the ultimate rights of the parties thereunder should be determined by the Government's civil antitrust proceedings against General Motors Corporation and affiliated companies", contrary to the express language of Paragraph 12 of the original consent decree, and in the complete absence from the record of any evidence to support such finding.
2. In finding (Finding No. 4) "that time was not of the essence with respect to lapse of the bar against affiliation", contrary to the express language of Paragraph 12 of the original consent decree, and without any evidence in the record to support such finding.
3. In finding (Finding No. 8) "that the Government has proceeded diligently and expeditiously in its suit to divorce General Motors Acceptance Corporation from General Motors Corporation", upon evidence clearly disclosing undue delay by the plaintiff.

4. In finding (Finding No. 9) "that further extension of the bar against affiliation will not impose a serious burden upon defendants", contrary to the recognition of the fact of such burden by both parties in fixing the terms of the consent decree, and in the complete absence of any evidence in the record to support such finding.

5. In concluding as a matter of law (Conclusion No. 1) that the order entered December 21, 1940, became the law of the first petition for extension in the case, insofar as, if at all, such conclusion involves a holding that the determination of questions of law upon which that order was based are binding in the present decision on the plaintiff's motion for Modification of the Final Decree and of the Final Decree as Modified, and are not now subject to reconsideration or review.

6. In concluding as a matter of law (Conclusion No. 2) that the court may in the exercise of its equity jurisdiction, and pursuant to plaintiff's mere motion, properly make an order for injunctive restraint of defendants, without requiring any evidence in support of the allegations upon which the motion founds plaintiff's right to such restraint.

7. In concluding as a matter of law (Conclusion No. 3) "that the purpose and intent of the decree will be carried out if Chrysler is given the opportunity at any future time to propose a plan for the acquisition of a finance company, and to make a showing that such plan is necessary to prevent Chrysler Corporation from being put at a competitive disadvantage during the pendency of complainant's civil litigation against General Motors Corporation, et al."; in disregard of the express and unambiguous provisions, particularly Paragraph 12, of the original consent decree, upon findings supported by no evidence, and without requiring the plaintiff to produce any evidence in support of its allegations as to purpose and intent denied by the answer.

8. In impliedly holding as a matter of law that after entry of a consent decree barring affiliation of the defendants with a finance company for a definitely fixed period, a court may—without proof of the affirmative allegations in support of the motion and denied by the answer, and without the consent of the parties—nevertheless further extend the bar against affiliation by an injunctive order upon a finding that to do so will not impose a serious burden upon defendants.

9. In modifying the Final Decree—In Modification, without requiring evidence in support of the allegations contained in plaintiff's motion and controverted in defendants' answer.

10. In failing and refusing to dismiss plaintiff's Motion for Modification of the Final Decree and of the Final Decree as Modified, for failure of the plaintiff to allege or prove facts sufficient to entitle the plaintiff to the relief it sought by said motion.

11. In enjoining the defendants from acquiring and retaining ownership of, or control over, or interest in, any finance company until after January 1, 1943.

12. In failing to hold that defendants, on and after January 1, 1941, pursuant to the terms of the original consent decree, and on and after January 1, 1942, pursuant to the terms of the Final Decree—In Modification, were and are no longer precluded from acquiring and retaining ownership of and/or control over, or interest in any finance company or from dealing with such finance company and with defendants' dealers in the manner provided in said original consent decree.

13. In modifying the consent decree without acquiescence of the parties.

14. In rendering the Final Decree—In Modification of Final Decree as Modified, filed and entered herein in the District Court of the United States for the Northern District of Indiana, South Bend Division, on February 16th, 1942, wherein said court modified Paragraph 12 of said consent decree, dated November 15, 1938.

Argument.

There was nothing before the court to warrant its rewriting the consent decree; and its action in arbitrarily doing so, without either evidence or the consent of the parties, was not due process of law.

Except as the findings and conclusions of the court below are to the effect that the United States had not performed the express condition of Paragraph 12 of the consent decree, there is no evidence to support them, none having been offered. Indeed, the Government seems not to regard the case as one for proof, and merely asks the courts to disregard the provision of the decree relating to the termination of the restraint, without evidence and merely upon the assertion that the "purpose" of the consent decree was to make Chrysler's right to have an interest in a finance company abide the event of the General Motors suit. Since the terms of Paragraph 12 of the decree do not so provide, the courts are asked to rewrite the decree so as to continue the restraint upon Chrysler until January 1, 1943, and the Government indicates that it intends to repeat this request indefinitely until the end of the General Motors suit (R. 60). But, since there is no ambiguity in the language of Paragraph 12, the issue is not one of construing the consent decree. This the Government in effect admits because, otherwise, it would not have filed its present motion to revise the express terms of the decree. Moreover, since the Government has offered no evidence showing a change

of circumstances requiring a modification of the decree, the issue is not one of conforming the decree to a different or a new state of facts. The only issue is whether, merely at the request of the Government and without either consent or evidence, the court below was correct in rewriting an important clause of the consent decree to the detriment of Chrysler.

Since Paragraph 12 by its own terms provides that Chrysler shall not continue bound if the Government has not obtained its civil decree against General Motors by January 1, 1941, the Government finds itself driven to claim that Paragraph 12 means the opposite of what it says and is itself the source of a right of the Government to have decrees modifying Paragraph 12 entered upon request as long as the Government has failed to perform the condition of Paragraph 12. But the unambiguous Paragraph 12 itself permits of no such construction. It provides, as an "express condition", that

notwithstanding the provisions of the preceding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1941, requiring General Motors Corporation permanently to divest itself of all ownership and control over General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude [Chrysler] from acquiring and retaining ownership of and/or control over or interest in any finance company. * * *

The Court, upon application of the respondents, or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted.

There was nothing more before the court below upon which it could modify the decree.

A. THE INTERPRETATIVE ARGUMENTS TO WHICH THE GOVERNMENT RESORTS ARE WHOLLY IMMATERIAL IN VIEW OF THE EXPRESS LANGUAGE OF PARAGRAPH 12 OF THE DECREE.

In view of the lack of substance in its case, the Government is driven to resort to a variety of interpretative arguments in the effort to spell out of the decree itself a ground for changing its terms.

1.

The Government's bald assertion of a "purpose" of the consent decree different from its plain language was not ground for rewriting the decree.—Paragraph 12 does not contain any ambiguity for the courts to construe. By its language, it provides for protecting Chrysler in precisely the event that has happened, that is, the failure of the Government to secure a decree against General Motors within the agreed time. It does not provide for rewriting the decree to take away that protection because of the happening of the very event upon which the protection of the Paragraph was expressly designed to come into operation.

The consent decree contains other clauses protecting Chrysler in the manner and upon the conditions set forth in those clauses respectively. The Government, however, cannot point to any one of these, or to any other provision of the decree, which by its terms attempts or purports to restrict this provision of Paragraph 12. There is no conflict for the court to reconcile. The terms of Paragraph 14 reserving, as the Government states, jurisdiction to modify the decree do not contain any language limiting Paragraph 12 and at the most can be effective only upon a proper showing supported by evidence, for it is merely the customary reservation of equity jurisdiction which would exist even without express reservation. *United States v. Swift & Co.*, 286 U. S. 106, 114-115. If there were any question of construction, Paragraph 12 sets forth explicitly the rule to

apply. The condition of that Paragraph by its own terms expresses its provisions to be operative "notwithstanding the provisions of the preceding paragraph of this paragraph 12 and of any other provisions of this decree." Thus it controls every other provision of the consent decree and no other provision of the consent decree controls it,

There being no ambiguity in Paragraph 12 of the consent decree, and there being no other provision of the decree which modifies the clearly stated express condition of Paragraph 12, the court below was not at liberty to look beyond the decree to find a purpose opposite to the purpose the consent decree itself expresses. This Court has stated the rule many times. Where language is clear and explicit, there is no call for construction, and the courts may not resort to extraneous evidence to ascertain a different purpose. "No exposition is allowable contrary to the express words of the instrument." *Kihlberg v. United States*, 97 U. S. 398, 402; *Calderon v. Atlas S. S. Co.*, 170 U. S. 272, 280. A court may not look beyond a document "for the purpose of adding a new and distinct undertaking." *Maryland v. Railroad Company*, 22 Wall. 105, 113. The trial court violated this elementary rule in deciding this motion. It looked beyond the clear language of the consent decree to find a new and different meaning for the consent decree and to impose on the defendants a new and different obligation.

2.

The decree, by its language and by its substance, made time of the essence of the "express condition" of Paragraph 12.—The Government invokes a rule of the law of contracts, to the effect that time is not of the essence. But, in the first place, that doctrine ought not be applied in a situation where the party against whom it is applied cannot be compensated for the other party's delinquency, as is the rule in contract cases. Moreover, if it is to be applied here in favor of the

Government, by the same token it may be invoked by private parties to escape timely compliance with equity decrees. Finally, even if the doctrine is applicable to decrees, it does not help the Government here. For, even in contract law, the rule is settled that "one party may make his promise expressly conditional on the exact performance of any agreed condition." 3 *Williston on Contracts* §846, p. 2372. *Jones v. United States*, 96 U. S. 24, 27; *Ellis v. Atlantic Mutual Ins. Co.*, 108 U. S. 342. By the language of the consent decree, the Government's obtaining a final order or decree against General Motors on or before January 1, 1941, was made an "express condition" of Chrysler's being further bound not to have an interest in a finance company.

3.

The Government's claim of diligence, and even the trial court's view that the Government was diligent, are not grounds for rewriting the consent decree to increase the burden upon Chrysler.—The condition of Paragraph 12 is express and unambiguous, and it does not depend upon the diligence of the Government in conducting its civil suit against General Motors. The finding of diligence therefore is irrelevant.

Moreover, the evidence that the Government adduced to support its allegation of diligence shows that it did not begin its suit against General Motors until October 4, 1940. This was nearly two years after the entry of the consent decree against Chrysler. The Government then, five times, voluntarily extended General Motor's time to move or answer, until July 15, 1941, more than six months after it was to have had a final decree in the case if Chrysler was to remain bound (R. 91, 95, 97, 104, 126). The Government defaulted on General Motors' motion for a further extension on July 15, 1941 (R. 136A): Thereafter the Court again extended General Motors' time to move or answer until January 15, 1942 (R. 135-153).

Chrysler had no voice in determining when the Government should start its suit against General Motors or how it should manage it. The Government started the suit when it did, and managed it as it did, with full knowledge of the terms of the express condition of Paragraph 12 of the consent decree against Chrysler. Those terms make getting a final decree against General Motors by January 1, 1941, and nothing else, the determinative test.

4.

The argument that the extension of the decree will not burden Chrysler is fallacious and unsupported.—Nothing was before the trial court to support its finding that re-writing the decree, to extend the time during which Chrysler might not have an interest in a finance company, would not impose a serious burden on Chrysler. On the contrary, the burden is both great and apparent. The Government offered no evidence on the point.

In its bill of complaint against Chrysler in the suit in which the original consent decree was entered, the Government alleged that there were about 10,000 Chrysler dealers, that in the three years before the bill was filed they had bought about two and a half billion dollars worth of automobiles from Chrysler, that General Motors dealers had bought about six and a half billion dollars worth of cars from General Motors, that the great majority of dealers were not able to do this with their own money, and that finance companies affiliated with motor car manufacturers, had supplied a large part of this money and also about two-thirds of the money required to finance the retail time sales of the dealers (R. 5-6). The heart of the Government's attack on Chrysler, Ford, and General Motors in all these finance company cases was the great benefit to these motor companies of having finance companies as affiliates. A principal purpose of the Government's attack

was to end the affiliation. As appears from the face of the Government's bill in equity against Chrysler and upon the the face of the original consent decree, the problem in drawing the consent decree here involved was how long Chrysler, as a competitor of General Motors, could afford to submit itself to the restraint of the consent decree while General Motors remained free; and how long the Government with any show of fairness to Chrysler, and regard for the best interests of the public in preserving competition, could ask Chrysler to stand such an unequal burden. The situation was further aggravated by the fact that the Government could not, or at least did not, commit itself even to undertake to compel General Motors to divorce its finance company.

The parties solved these problems by providing in Paragraph 12 that Chrysler should incur the great competitive disadvantage and be bound for only a fixed time, until January 1, 1941. They made it an "express condition", therefore, that if the Government should not get its order within that time, then nothing in the decree should preclude Chrysler from having an interest in a finance company; but even in that event, Chrysler would remain subject to all of the other restraints of the consent decree.

The petition shows the original disparity between General Motors and Chrysler. The consent decree, by imposing upon Chrysler restraints to which General Motors has not been subjected, increased this disparity. By the time of trial and final appeal of the General Motors case the disparity and the disadvantage to Chrysler will have further increased.

The Government has convicted General Motors of conspiracy. If, at long last, the Government compels General Motors in the civil suit against the latter to divorce its finance company the conviction will be a factor in the deciding of that suit, a factor not present in the Chrysler case.

That divorce will not necessarily rest on a general rule of law, which up to this time no court has announced, that a manufacturing company may not have an interest in a finance company to help it market its product. The divorce may be merely an assurance against the consequences of the particular conspiracy and have no significance as a general rule of law.

The effect of Paragraph 12 of the consent decree against Chrysler was that, if the Government obtained its order against General Motors within the time limited, Chrysler would continue to be bound whether or not the decision against General Motors established a general rule. If, however, the Government failed to have its order within the time, then Chrysler was to be free of the unequal disadvantage which it had accepted for the interim period. But even in this latter event, Chrysler in the future would be bound by whatever the general law might then prove to be—bound not by reason of the consent decree but by general operation of law.

This is a fair and proper arrangement. Chrysler already has suffered a severe and important competitive disadvantage for the period that it undertook to do so, and also under the incorrect decisions of the lower court for more than a year besides. There is neither impropriety nor incongruity in Chrysler being subject only to the general rules of law and to the other terms of the consent decree while the Government proceeds against General Motors. This would not interfere with any endeavor of the Government to obtain in its civil suit against General Motors a decision that will establish general rules of law.

The Government has prohibited the manufacture and sale of automobiles for civilian use. All the probabilities are that there are among Chrysler's 10,000 dealers many who, in these times, will need help that independent banks and finance companies, deprived of the dealers' profitable

retail time sales business, will not be able or willing to provide. General Motors with its great finance company is able to accomodate its dealers. Chrysler is powerless. Moreover, if the Government suspends antitrust proceedings indefinitely, as appears to be its plan, General Motors will have its great advantage not only for the long time such proceedings normally take but also for the further period of this war time suspension. This advantage may mean the difference between General Motors' saving its dealer organization, an automobile manufacturer's most priceless treasure, and losing it, while Chrysler, if the unjust order of the lower court stands, is bound and sacrificed. If, when the war ends and the companies can make cars again, Chrysler still is bound and General Motors still has its finance company to help its dealers back into business by offering favorable wholesale and retail financing, Chrysler's plight will be still worse.

The suddenness of the attack on Pearl Harbor, the state of war, and the orders suspending the automobile business show clearly how unfair it is for courts to make illegal orders not resting upon evidence, merely because the trial judge does not at the moment think he sees disadvantage to the injured party. Neither the court nor the Government meets this by suggesting (R. 156) that Chrysler be allowed to bring formal proceedings from time to time for permission to do what the court below has attempted, without any basis of evidence, to prevent it from doing. This suggestion leaves out of account the expedition necessary in competitive business in ordinary times of peace, to say nothing of that required by the startling changes that occur in time of war. There is no basis in law or in justice for such an attempt to substitute, for the burden upon the Government of proving that Chrysler ought not to have a finance company, a burden upon Chrysler to establish that it ought to have one.

B. THE GOVERNMENT HAS WHOLLY FAILED TO PROCEED UPON PLEADINGS AND PROOF AS REQUIRED BY THE DECISIONS OF THIS COURT.

This Court has repeatedly established the methods and requirements necessary for obtaining the modification of consent decrees. Reference to these decisions will emphasize the unwarranted nature of the proceedings and decree here involved.

1.

The moving party—here, the Government—has the burden of pleading and proof.—The appellants denied the material allegations of the Government's original complaint and of the Government's motion (R. 64-66). The Government, as the moving party, had the burden of proving all the facts necessary to establish its right to impose or extend the restraint upon Chrysler. *United States v. Linn*, 1 How. 104, 111; *Lilienthal's Tobacco v. United States*, 97 U. S. 237, 267; *Henderson v. Carbondale Coal and Coke Co.*, 140 U. S. 25, 35. The Government's motion was not evidence. *Cucullu v. Hernandez*, 103 U. S. 105, 110; *United States v. International Harvester Co.*, 274 U. S. 693, 703. The Government has made no attempt to undertake this burden.

It was essential that the United States file a motion for leave to file a supplemental complaint under Federal Rule of Civil Procedure No. 15(d) in order that issues might properly be made and the case regularly heard and decided. *Osage Oil & Refining Co. v. Continental Oil Co.*, 34 F. (2d) 585, 589; *Kaw Valley Drainage Dist. v. Union Pac. R. Co.*, 163 Fed. 836, 837. Rule 15 (d) provides that, as to the "transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented," a supplemental pleading may be filed, but then only upon motion for the consent of the court and "upon o

reasonable notice and upon such terms as are just" with provision for a responsive pleading where advisable. In the present case, no attempt was made by the court below or the Government to comply with these requirements.

Upon such proceedings, the trial court would be required to make appropriate findings of fact. Such findings are required to be based upon evidence or upon relevant facts within the judicial knowledge of the court. *Helvering v. Tex-Penn Oil Co.*, 300 U. S. 481, 497; *Atchison, Topeka & Santa Fe R. R. v. United States*, 295 U. S. 193; *Florida v. United States*, 282 U. S. 194; *Collier v. United States*, 173 U. S. 79; *United States v. Clark*, 96 U. S. 37; *Courtney v. Walker*, 26 F. (2d) 583, 585; *Beckley National Bank v. Boone*, 115 F. (2d) 513, 515, cert. denied 313 U. S. 558.

2.

The Government has neither alleged nor proved grounds requisite for the modification of an antitrust consent decree.—The Government has not alleged or proved new or unforeseen states of fact, or any failure by Chrysler to comply with the consent decree or with law, or any threat to violate the consent decree or any law. Without such a showing the Government is not entitled to have the consent decree rewritten. *Swift and Company v. United States*, 196 U. S. 375, 396; *United States v. United States Steel Corporation*, 223 Fed. 55, 59, aff'd *United States v. U. S. Steel Corp.*, 251 U. S. 417, 445; *Industrial Ass'n v. United States*, 268 U. S. 64, 84; *Standard Oil Co. v. United States*, 283 U. S. 163, 179; *Appalachian Coals, Inc. v. United States*, 288 U. S. 344, 377; *United States v. E. I. du Pont de Nemours & Co.*, 188 Fed. 127, 129, 130; *United States v. E. I. du Pont de Nemours & Co.*, 273 Fed. 869, 873; *Aluminum Co. of America v. Federal Trade Commission*, 299 Fed. 361, 363, 365, cert. denied 261 U. S. 616.

In *United States v. Swift & Co.*, 286 U. S. 106, 119-120, the company sought to change a consent decree. In *United States v. International Harvester Co.*, 274 U. S. 693, 703, the Government sought to change one. In both cases this Court decided against rewriting the decree. In the *Swift* case, the court said:

Nothing less than a clear showing of grievous wrong evoked by new and unforeseen conditions should lead us to change what was decreed after years of litigation with the consent of all concerned. . . . What was then solemnly adjudged as a final composition of an historic litigation will not lightly be undone . . . and the composition held for nothing.

In the *Harvester* case, the court held that, to modify the consent decree over objection and without a showing that the situation under the consent decree was not in harmony with law or that the company was not complying with the consent decree,

would be plainly repugnant to the agreement approved by the court and embodied in the decree, which has become binding upon all parties and upon which the [defendant] has, in good faith, been entitled to rely.

That the Government did not comply with the express condition of Paragraph 12 was not a new and unforeseen fact. This was precisely the possibility that the parties intended Paragraph 12 to provide for. The Government did not allege or prove that for Chrysler to have an interest in a finance company would be unlawful. The provision of Paragraph 12 of the consent decree conditionally limiting the right of Chrysler to have an interest in a finance company is not any indication of unlawfulness. The consent decree, in terms, provided that neither the decree nor Chrysler's consent thereto "shall be considered as an ad-

mission or adjudication that it has violated any statute" (R. 24). Ownership by one company of stock of another, even though it be stock of a finance company, is not ordinarily unlawful. In the General Motors criminal case, itself, the District Judge in charging the jury said (R. 65):³

It is not unreasonable for the General Motors Company to have a finance company. . . . They have a perfect right to have a finance company and to recommend its use.

We do not know of any authority to the contrary.

The consent decree is as clear as language can make it that the restraints it imposes upon Chrysler are all the restraints that Chrysler consented to be bound by, and all the restraints that the parties intended by the decree to impose upon Chrysler. The Government was not entitled to the original consent decree except as Chrysler consented to it. The Assistant Attorney General at the time announced that he had joined in the consent because the decree contained terms that he could not have obtained by litigating (see Public Statement, Department of Justice, Consent Decrees in Automobile Finance Cases, November 7, 1938, pp. 4, 9). Without the consent of Chrysler, the Government would have had to prove facts and apply legal principles sufficient to support every clause of the decree under the Sherman Act. It would have had to establish that Chrysler could not lawfully have an interest in a finance company. In order to change the terms of that decree so as to extend any restraint upon Chrysler without Chrysler's consent, the Government must now allege and prove facts sufficient to entitle it to that relief under the Sherman Act. This it did not do.

³ See record in No. 352, October Term 1941, p. 1938.

Conclusion.

It is respectfully submitted that the decree of the District Court dated February 16, 1942, modifying the final consent decree should be reversed.

Respectfully,

NICHOLAS KELLEY,
WILLIAM STANLEY,
T. R. ISERMAN,
Counsel for Appellants.

LARKIN, RATHBONE & PERRY,
Of Counsel.

April, 1942.

(9688)

No. 1036

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

CHRYSLER CORPORATION, DESOTO MOTOR COR-
PORATION, PLYMOUTH MOTOR CORPORATION,
DODGE BROTHERS CORPORATION, AND CHRYS-
LER SALES CORPORATION,

Appellants,

vs.

THE UNITED STATES OF AMERICA

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF INDIANA

REPLY BRIEF FOR APPELLANTS.

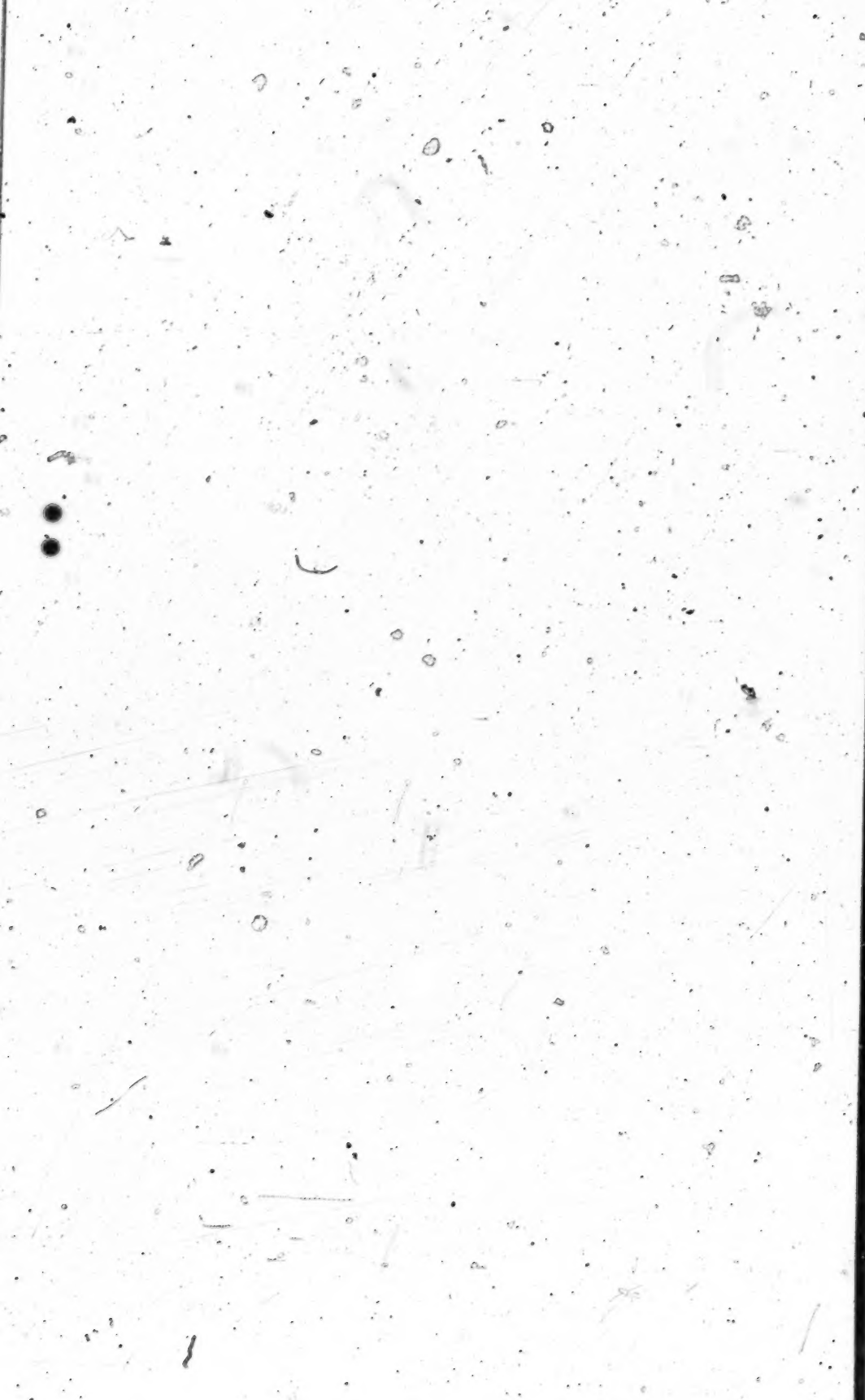
NICHOLAS KELLEY,
WILLIAM STANLEY,
T. R. ISERMAN,
Counsel for Appellants.

LARKIN, RATHBONE & PERRY,
Of Counsel.



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REPLY BRIEF FOR APPELLANTS.

Errors and Admissions in Government's Statement and Brief.

Appellants call to the Court's attention the following erroneous statements or implications in the Government's brief: Commercial Credit Company and its subsidiaries are not Appellants here. (Gov't Br. 3). The *only* evidence which the Government offered in the court below was cer-

tain documents in the civil proceeding against General Motors (Gov't Br. 5; R. 166). Appellants did not "fail" to offer evidence in any sense indicating a default of any duty upon them to come forward with evidence (Gov't Br. 6); but Appellants merely introduced no rebuttal evidence, "the Government's evidence . . . not having created any issue of fact" (App. Br. 8). Under the heading "General Nature and Scope of the Consent Decree" (Gov't Br. 9), the Government discusses Paragraph 12a in such a way as to make it appear that the separate Paragraph 12 was to operate "in like manner" (Gov't Br. 11), and fails (Br. 9-11) to take account of the fact that Paragraph 12a is distinct from, and is not a subsection or part of, Paragraph 12 (see App. Br. 4 and Note 1 pp. 3-4; R. 40-41) and by its terms is to operate in a different manner. The Government also implies that the Appellants are "seeking escape from obligations" to which they have assented (Gov't Br. 19-20), whereas in fact it is the Government itself which seeks escape from the express condition of Paragraph 12 to which it assented.

The Government concedes, in specific and unqualified language, the inequitable nature of its case. It admits that the decree "manifests on its face" that Chrysler gave its assent only upon the specific condition (Gov't Br. 24) that "if, by that date [January 1, 1941] a decree not subject to further review had not been entered ending General Motors' affiliation with G. M. A. C., the prohibition was to be no longer operative" (Gov't Br. 24-25; Finding No. 6, R. 155), and that "this basis for framing the decree was reasonable from the standpoint of all concerned" (Gov't Br. 24). Despite these clear admissions, the Government still insists that, upon its mere request, the trial court could set at naught the "express condition" of Paragraph 12.

The Government's Brief Does Not Disclose Any Basis for Modifying the Decree.

The discursive argument of the Government fails to disclose any warrant, under existing law or in common justice, for the modification of the decree. As a matter of fact, the Government seeks to have this Court accept a new principle for the modification of decrees, a principle that the Government's unsupported and controverted assertion of "objectives" or "state of mind" shall override a clear and unequivocal provision of the decree to the contrary. In the remainder of its argument, in the guise of supporting the findings of the court below, the Government struggles to explain away the plain and specific terms of Paragraph 12; it brings forward pretended "changes of condition" as sustaining the modification of the decree; and it asserts a claim of "diligence" which is both irrelevant under the terms of the decree and contrary to fact.

1.

THE GOVERNMENT SEEKS TO HAVE THIS COURT ACCEPT A NOVEL AND UNTENABLE GROUND FOR THE MODIFICATION OF DECREES.—In its first argument, entitled "Principles Governing Modification of A Consent Decree" (Gov't Br. 17-20), the Government, taking a general expression out of its context of law and fact in a Pennsylvania decision, manufactures a rule that the court which enters a decree may modify it arbitrarily upon a mere statement that "the ends of justice would be served" by such modification (Gov't Br. 17, 22). Of course, all judicial proceedings are designed to promote "the ends of justice", but judgments and decrees, original as well as modifying, are entered only upon proper pleadings and proof, and according to the rules of law. Otherwise judicial fiat would take the place of due process.

Next, the Government argues much in derogation of *United States v. Swift & Co.*, 286 U. S. 106, on the ground

that there it was not the Government but a private party which sought a modification of a decree (Gov't Br. 17-19). But the Government does not mention *United States v. International Harvester Co.*, 274 U.S. 693, 710, in which the shoe was on the other foot and in which this Court held that the Government could not obtain an amendment of a consent decree unless it alleged and proved a situation not "in harmony with law"; nor does the Government, in its brief, deign to discuss other numerous authorities of this Court set forth in Appellants' brief (pp. 21-22).

Despite its disavowal "that different principles apply where . . . the moving party is the Government" (Gov't Br. 19), the Government asserts on the very next page that the trial court in this case should be permitted to "go much farther" than "when only private interests are involved" (Gov't Br. 20). Even such a rule would not give the Government a right to have an equity consent decree modified merely upon its assertion of whatever it chooses to call its "objectives"—not the objectives stated in the decree but merely those which the Government says it "had in mind" (Gov't Br. 19). The Government thus asserts authority to modify solemn decrees merely upon its own ipse dixit.

Heretofore the basic and unbroken rule of law has always been that the purpose or objective of unambiguous decrees is to be construed upon their face—from and within their four corners—rather than upon the ex post facto, elusive, precarious, and unreliable assertions of a contrary understanding, intent, or objective of a party or even of the court of original jurisdiction (App. Br. 14). The application of this basic principle is indispensable here where the decree provision is clear and specific, where only one party asserts the alleged "objective", where the court merely entered as its decree what had been agreed upon by the parties after long negotiation, and where the alleged

"objective" is destructive of the whole of the provision sought to be modified. Otherwise, the very purpose of written instruments is undermined.

THE FINDINGS OF THE COURT BELOW ARE MERE SHAM.—Aside from its novel "rule" for modifying consent decrees upon mere Government request, discussed above, the Government seeks to sustain its action, and that of the court below, by the timeworn device of pulling one's self up by the bootstraps. It first asserts that "there can be no doubt as to the propriety of the court's action, assuming the validity of its findings" (Gov't Br. 21). This single sentence is unsupported by reason or authority except for the Government's statement that Appellants "do not seem to question the propriety of the change in the decree made by the district court if, in fact, its findings are correct" (Gov't Br. 21). But this latter statement is completely erroneous. Appellants' specifications of error set out the irrelevant and insufficient nature of finding after finding (App. Br. 8-11), and the whole of Appellants' main brief is devoted to the same general theme. Moreover, the findings do not rest upon evidence; the Government presented no evidence in support of them.

The Government, after this barren paragraph in its brief, turns immediately to a discursive argument under the misleading heading, "The Facts before the District Court Amply Support Its Findings as to Purpose" (Gov't Br. 22-33). But these "facts" turn out to be nothing more than the original decree itself. It is true that the court below made a "finding" as to purpose (No. 3, R. 155); but this "finding" is merely an interpretation of the so-called "basis" for the original decree. It does not answer the point here involved, which the express condition of Paragraph 12 of the decree covers without ambiguity. The Government offered no evidence to support this "finding". It

asserts that the court could properly consider "the circumstances under which the [original] decree was entered, its scope and structure as a whole, and the evils which the decree was designed to prevent" (Gov't Br. 23). But all of these, and the terms of the proposed consent decree as well, were before the parties and the court when they consented to, and entered, the decree. No other provisions of the consent decree affect the express condition of Paragraph 12 because the latter provides that it shall be operative "notwithstanding . . . any other provisions of this decree" (R. 40). Accordingly, whatever the original complaint of the Government or the intent of the parties, all have been dealt with and, under familiar principles of law respecting written instruments, merged into the specific terms of the decree, including Paragraph 12.

This case is therefore manifestly not one for interpretation because (a) the decree is clear, specific, and unambiguous, and (b) if the question were merely one of interpretation there would be no need for the amendatory decree here in issue. The Government concedes as much, saying with respect to Paragraph 12 that "the issue here is not what this provision means", but it insists that the trial court may "look beyond the face of this provision" to find an "objective" upon which a restraint of the decree may be extended despite the express terms of the decree itself (Gov't Br. 22). Admitting that it had freely and fairly agreed to the express condition of Paragraph 12 (Gov't Br. 24-25), the Government makes the bare assertion that its agreement is "not inconsistent" with its view that the express condition of Paragraph 12 shall be inoperative (Gov't Br. 25-26). It predicates this conclusion on two hypotheses: The first is, "if the parties . . . acted upon the belief that General Motors would . . . assent to a decree". The second is, "the parties *may have* also acted upon the

belief" that the Government would either meet its "timetable" or secure a modification of Paragraph 12 by consent or court order. The Government concludes that, in either case, "there is no inconsistency" (Gov't Br. 25-26). The trouble with this curious argument, however, is that it is not only wholly speculative but it amounts merely to an assertion that parties are not inconsistent if they agree to one thing but one of them mentally notes, or "may have" noted, that he will do something else—an idea subversive of the very basis of the law as relates to written instruments. The result of any such theory is to make Paragraph 12 and every other provision of the decree meaningless.

Next, the Government resorts to rules regarding the interpretation of private contracts (Gov't Br. 27-28), which, as pointed out in Appellants' main brief (pp. 14-15), do not help the Government.

Finally, in concluding its interpretative arguments, the Government belittles its own decree on the ground that, if Paragraph 12 is the "timetable" that the Government concedes it to be, then the Government has engaged in a "frivolous" and "purely gambling proposition" (Gov't Br. 28, 29, 30). The Government asserts that this would be reasonable only if the point were regarded "as of merely minor or incidental importance" (Gov't Br. 29). But the parties—though the matter was concededly a principal item in the original complaint of the Government and in the framing of the consent decree (App. Br. 16-17; Gov't Br. 29)—deliberately determined upon the timetable of Paragraph 12 as a compromise to solve the difficult question of placing Chrysler under restraint while leaving its principal competitor free (App. Br. 3-6). It was, moreover, a solution which the Government elsewhere in its brief recognizes as both reasonable and practicable (Gov't Br. 24-25).

In concluding the point the Government makes four arguments:

(a) The Government argues that to allow Chrysler the benefit of Paragraph 12 would "weaken the effectiveness of the decree" (Gov't Br. 30-31). But the answer is that the Government deliberately agreed to Paragraph 12 and must not then have regarded it as "weakening the effectiveness of the decree".

(b) The Government argues that, in any later proceedings respecting affiliation, the Government would lose the effect of linking it "with the illegal conspiracy charged in the Government's [original] bill of complaint in this case" (Gov't Br. 31). But the answer is that the Government agreed that Chrysler should no longer be bound if the Government did not meet the "timetable" and thereby agreed to relinquish for the future the advantage it might have in "linking" an affiliation proceeding with other alleged acts of conspiracy settled by the decree.

(c) The Government argues that Chrysler has come forward with no showing "that affiliation gives General Motors a competitive advantage in the sale of its cars" (Gov't Br. 32). But the answer is that the burden is upon the Government to prove that it would be illegal for Chrysler to have any interest in a finance company, and not upon Chrysler to prove that it ought to have such an interest.

(d) The Government argues that Chrysler has had enough "substantial advantages . . . from its acceptance of the consent decree" without insisting upon the terms of Paragraph 12 (Gov't Br. 33). But the Government cannot at will rewrite the decree it consented to, merely because it now thinks that the decree is not unfavorable enough to Chrysler.

THE GOVERNMENT RELIES UPON PRETENDED "CHANGES OF CONDITION" AS SUPPORTING THE DECREE OF MODIFICATION.—

Although the court below actually made no finding on the point, the Government asserts that modifying the decree "merely adapts the provisions of the decree to circumstances which have arisen since its entry" (Gov't Br. 21-22). Later in its brief, under the heading "Material Changes in Circumstances and Conditions Occurring since Entry of the Decree Justify the Decree of Modification" (Gov't Br. 33-36), the Government grasps at two events relating to the automobile industry. First, it points out that the criminal proceeding against General Motors has resulted favorably to the Government (Gov't Br. 33-34). This was an event that was expressly foreseen by the Chrysler consent decree itself but which did not affect the operation of the express condition of Paragraph 12. It was, therefore, not a new and unforeseen condition within the rule of the *Swift* and *Harvester* cases (App. Br. 21-22).

Secondly, the Government points to the war and its attendant curtailment of automobile production as a further "change in conditions" (Gov't Br. 34-36). Here the Government's theory seems to be that Chrysler cannot be at a competitive disadvantage because the automobile business has been drastically restricted. But automobiles and dealers still exist in the commercial world. Dealers are hampered and in need of financing aid. General Motors has its wholly owned finance company to supply such aid; but Chrysler, under the modified decree here in issue, can have no corresponding means for furnishing it, despite the need to keep intact its dealer organization. The Government suggests that Chrysler aid its dealers out of pocket or "repurchase cars now in the hands of its dealers" (Gov't Br. 35-36). Then it adds that, if all this is not

enough, Chrysler should petition the district court for its own modification of the decree (Gov't Br. 36). In short, the Government seeks to require Chrysler to extend its operations to the retail field, to qualify itself to do business in every state, and to subject itself to local taxing and other regulatory authorities; and, if all this is too much, to assume the burden of getting the decree modified. But Chrysler is entitled to have the plain and unambiguous terms of Paragraph 12 left unchanged. It is no answer for the Government or the court below (R. 156) to suggest, and remand Appellants to, some alternative, more burdensome, and less effective mode of procedure or operation.

4.

THE GOVERNMENT'S CLAIM OF DILIGENCE IN PROCEEDING AGAINST GENERAL MOTORS IS BOTH IRRELEVANT AND CONTRARY TO FACT.—Despite the undisputed facts pointed out by Appellants (App. Br. 15-16), the Government ignores its two-year delay in instituting civil proceedings against General Motors. It attempts to blame the trial courts for granting continuances "over the Government's opposition" in those proceedings (Gov't Br. 37), but fails to note that it had itself previously five times voluntarily extended General Motors' time to answer (R. 91, 95, 97, 104, 126) and defaulted on another motion to the same effect (R. 136A). It pleads the "expense and burden" of conducting the civil proceedings against General Motors simultaneously with the criminal proceedings against General Motors (Gov't Br. 37-38).

But neither the Government's convenience nor diligence is relevant. The Government agreed that Chrysler should cease to be bound if the Government did not get its decree against General Motors by the required date. It did not agree to proceed against General Motors or to do it diligently. It could keep Chrysler bound by getting the decree

against General Motors; or it could let Paragraph 12 take effect and take its time against General Motors, or abandon its proceeding against General Motors. But in its case against General Motors, it cannot, under the express condition of Paragraph 12 of the decree or in equity, go beyond the specified time and still keep Chrysler bound.

The question is not one of diligence but of compliance with the express condition of Paragraph 12. For, with complete control of the prosecution of such proceedings and a wealth of experience in conducting such proceedings, the Government assented to the express condition of Paragraph 12 just as Chrysler consented to it. For all that appears here, therefore, the Government has shown no ground for relief from its undertaking.

Conclusion.

It is submitted that the decree of modification was entered without requisite pleading or proof, upon the mere request and assertions of the Government, and contrary to the express terms of the original decree. It was, therefore, imposed upon Appellants without due process of law and should be reversed.

Respectfully submitted,

NICHOLAS KELLEY,
WILLIAM STANLEY,
T. R. ISERMAN,
Counsel for Appellants.

LARKIN, RATHBONE & PERRY,
Of Counsel.

April, 1942.

No. 4036

In the Supreme Court of the United States

OCTOBER TERM, 1941

CHRYSLER CORPORATION, DE SOTO MOTOR CORPORATION,
PLYMOUTH MOTOR CORPORATION, DODGE
BROTHERS CORPORATION, AND CHRYSLER SALES
CORPORATION, APPELLANTS

v.

THE UNITED STATES OF AMERICA

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE NORTHERN DISTRICT OF INDIANA

BRIEF FOR THE UNITED STATES

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In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 1036

CHRYSLER CORPORATION, DE SOTO MOTOR CORPORATION,
PLYMOUTH MOTOR CORPORATION, DODGE
BROTHERS CORPORATION, AND CHRYSLER SALES
CORPORATION, APPELLANTS

v.

THE UNITED STATES OF AMERICA

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE NORTHERN DISTRICT OF INDIANA

BRIEF FOR THE UNITED STATES

OPINION BELOW

The district court did not render any opinion. Its findings of fact and conclusions of law are found at R. 155-156.

JURISDICTION

The decree of the district court was entered on February 16, 1942 (R. 156). Petition for appeal was filed on February 18, 1942, and was allowed on the same day (R. 157, 161).

(1).

The jurisdiction of this Court is conferred by Section 2 of the Act of February 11, 1903, 32 Stat. 823, 15 U. S. C., sec. 29, and Section 238 of the Judicial Code as amended by the Act of February 13, 1925, 43 Stat. 931, 936, 28 U. S. C., sec. 345. Probable jurisdiction was noted on March 16, 1942.

QUESTION PRESENTED

Whether the district court was warranted in changing a consent decree, which prohibited Chrysler Corporation from acquiring any interest in a finance company, to continue the prohibition through 1942.

STATUTE INVOLVED

The Act of July 2, 1890, 26 Stat. 209, known as the Sherman Act, as amended by the Act of August 17, 1937, 50 Stat. 693, provides in part as follows:

SEC. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal * * *. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a misdemeanor * * * (15 U. S. C., sec. 1).

SEC. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with

foreign nations, shall be deemed guilty of a misdemeanor * * * (15 U. S. C., sec. 2).

SEC. 4. The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney-General, to institute proceedings in equity to prevent and restrain such violations. * * *

STATEMENT

SUMMARY STATEMENT OF THE PROCEEDINGS

This is an appeal from the decree of the district court entered on February 16, 1942, modifying a decree entered with the consent of the parties on November 15, 1938, in an equity proceeding brought by the United States charging the defendants therein with being parties to a conspiracy in restraint of interstate commerce in violation of the Sherman Act. The defendants against whom this decree was entered are the present appellants (Chrysler Corporation and four subsidiaries engaged in marketing cars manufactured by Chrysler) and Commercial Credit Company and certain of its subsidiaries. Commercial Credit is a finance company¹ which long had been affiliated with

¹ As used in the decree (R. 26) and as used herein, the words "finance company" mean a company engaged chiefly in financing wholesale or retail purchases of automobiles.

Chrysler, but this affiliation had been severed early in 1938 when Chrysler disposed of its Commercial Credit stock and terminated its preferential contracts with that company (R. 16-17, 19-20).

The decree of November 15, 1938, in addition to many other injunctive provisions, prohibits Chrysler from acquiring an interest in any finance company, either by making loans or by purchasing securities (R. 40). Following this prohibition, set forth in the first paragraph of ¶ 12 of the decree, the second paragraph of ¶ 12 provides (R. 40-41):

It is an express condition of this decree that notwithstanding the provisions of the preceding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1941, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the manufacturer [Chrysler] from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a. * * *

In December 1940 the district court, on the motion of the Government and after hearing argument by counsel, entered an order modifying the decree by changing the date in the above provision from January 1, 1941, to January 1, 1942 (R. 56-57). The effect of this change was to prevent the bar against Chrysler's becoming affiliated with a finance company from expiring prior to January 1, 1942. Appeals by the defendants from this order were dismissed by this Court on December 8, 1941 "for want of a quorum of Justices qualified to sit" and a petition for rehearing was denied on January 5, 1942 (*Chrysler Corp. v. United States*, No. 40, this Term).

The Government's second motion for modification was filed on December 22, 1941, after prior service on appellants and notice of hearing (R. 57, 58). The motion prayed that the second paragraph of ¶ 12, as modified, be modified by changing the date set forth therein from January 1, 1942, to January 1, 1943 (R. 61-62). Appellants answered, denying most of the allegations of the motion (R. 63-67). At the hearing the United States introduced certain documentary evidence in support of its motion² and the court, at appellants' request, continued the hearing to February 16, 1942, to

² This evidence (R. 67-153) consisted of certified copies of the pleadings, motions, stipulations, and orders of the court in the civil proceeding brought by the United States in the Northern District of Illinois to compel General Motors to dispose of its General Motors Acceptance Corporation stock.

enable them to produce their evidence (R. 153-154). At the continued hearing appellants failed to offer any proof and the court, after hearing argument, filed its findings of fact and conclusions of law and entered a decree making the change in the consent decree requested in the Government's motion (R. 154-157).

Certain facts concerning (1) the circumstances under which the consent decree was entered, (2) the charges made in the bill of complaint on which this decree is based, and (3) the general scope and nature of the decree are believed to be pertinent to the issues raised by the present appeal and are set forth below.

THE CIRCUMSTANCES UNDER WHICH THE CONSENT DECREE WAS ENTERED

Three indictments were returned in the court below on May 27, 1938, one against appellants and Commercial Credit and its subsidiaries, one against Ford Motor Company and certain finance companies affiliated with it, and the third against General Motors and its subsidiary finance company, General Motors Acceptance Corporation (referred to herein as G. M. A. C.).³ Each of these indict-

³ Since a court may take judicial notice of its own records (*United States v. California Cooperative Canneries*, 279 U. S. 553, 555; *Aspen Mining & Smelting Co. v. Billings*, 150 U. S. 31, 38), the above proceedings were within the judicial notice of the district court.

ments charged a conspiracy to restrain interstate commerce in automobiles produced by the defendant manufacturer by excluding as far as possible all finance companies other than the company affiliated with the manufacturer from the business of financing such interstate commerce. Each indictment charged that, pursuant to such conspiracy, the manufacturer had given various specified special services, facilities, and preferences to its affiliated finance company and had coerced its dealers, in various specified ways, to use the services of the affiliate.

After the Chrysler group of defendants and the Ford group of defendants had agreed to the entry of decrees satisfactory to the Government, it filed on November 7, 1938, a bill in equity against each group of defendants charging violation of Section 1 of the Sherman Act. On the day these bills were filed, the respective defendants filed their answers and a form of consent decree was presented to the court which the court, after a hearing,⁴ entered on November 15, 1938. (See R. 15, 24.)

THE CHARGES MADE IN THE BILL OF COMPLAINT FILED AGAINST APPELLANTS

The bill of complaint filed against appellants (and Commercial Credit and its subsidiaries) charges that General Motors, Chrysler, and Ford produce about 90% of all the automobiles manu-

⁴ See *Chrysler Corp. v. United States*, No. 40, this Term, Record, p. 109.

factured in this country; that each of these manufacturers markets its cars in the same manner; that financing is essential to such marketing; and that each has engaged in a parallel, though separate, conspiracy with its affiliated finance company to exclude other finance companies from the business of financing its cars in interstate commerce (R. 4-8). The bill alleges:

Each of these three manufacturers sells its cars to dealers, and through them to the general public, and requires cash payment, prior to delivery, for all cars sold (R. 5-6). The great majority of the dealers must resort to finance companies to obtain the funds required for these advance cash payments and finance companies likewise supply the funds for retail purchasers when they buy, as they usually do, partly on credit (R. 6-7). During the three years 1935-1937 such financing has amounted to about \$5,500,000,000 in the case of dealer purchases and to about \$6,000,000,000 in the case of retail purchasers (R. 7-8). Although there are some 375 independent finance companies, the finance affiliates of the "Big Three" have obtained over 80% of the business of financing both dealer and retail purchases (*ibid.*).

The bill also alleges that, for the purpose of effectuating the conspiracy charged therein, Chrysler has in various specified ways coerced its dealers to use the services of Commercial Credit and has granted that concern numerous favors and privileges denied to other finance companies (R. 8-12).

THE GENERAL NATURE AND SCOPE OF THE CONSENT DECREE

All of the prohibitions of the decree directed against Chrysler are found in paragraphs 6 and 12.⁵ Paragraph 12, as previously stated (*supra*, p. 4), bars it from acquiring any interest in a finance company. Paragraph 6 contains detailed injunctive provisions against Chrysler's coercing dealers to use the services of any particular finance company and against Chrysler's granting special favors to any such company (R. 26-29, 37). The paragraph provides, however, that Chrysler may grant certain advantages to any "registered finance company" (R. 27, 28, 35-36). Subparagraph (j) of ¶ 6 authorizes any finance company to become "registered" by filing with the court in the same equity proceeding a statement that it will conform to the detailed rules for conducting its business which are set forth in this subparagraph (R. 29-34).

Paragraph 7 imposes certain inhibitions upon Commercial Credit which are correlative to some of those imposed upon Chrysler (R. 37-38).

A striking feature of the decree is that, while all the foregoing prohibitions are presently effective, their ultimate binding effect is made

⁵ Paragraph 9 (R. 39), providing that the defendants shall not do in combination any act which the decree forbids or omit any act which it requires, merely makes explicit a prohibition otherwise implicit in the decree.

dependent upon the outcome of the Government's proceedings against General Motors. The decree provides (§ 12a (1)) that if the criminal proceeding instituted against General Motors and G. M. A. C. on May 27, 1938, does not terminate in their conviction, "every" provision of the decree shall be forthwith suspended until such time as substantially identical requirements shall be imposed by decree upon General Motors and G. M. A. C. (R. 41). The decree also provides (§ 12a (2), (3)) that following such conviction, or following entry of a decree against General Motors not subject to further review, or on January 1, 1940, whichever is earliest, the defendants shall be entitled to obtain a suspension of every requirement of paragraph 6 to the extent that it is not then imposed, and until it shall be imposed, by decree upon General Motors (R. 41-43).⁶ For the purpose of this provision a verdict of guilty is to be deemed "the equivalent of a decree" against any agreement, act, or practice which the trial court in the criminal proceeding against General Motors has held, in its instructions to the jury, to constitute a proper basis for a verdict of guilty (R. 41-42).

Paragraph 12a thus provides for bringing the

⁶ As to subparagraphs (a), (b), (c), and (g) of paragraph 6, the right to obtain such suspension is qualified by the further requirement that the defendants show to the satisfaction of the court that General Motors or its subsidiaries is performing some agreement, act, or practice prohibited thereunder (R. 43).

prohibitions against dealer coercion and finance company preferences into conformity with the results achieved in the Government's litigation against General Motors and the paragraph also provides for relief from these prohibitions unless the practices prohibited have, by a specified date, been adjudicated as illegal in the General Motors litigation. In like manner, the second paragraph of ¶ 12, which is here involved, grants Chrysler relief from the prohibition against affiliation with a finance company unless the Government in its civil litigation against General Motors (in which alone affiliation could be prohibited) obtains, by a specified date, a final adjudication divorcing it from G. M. A. C. and forbidding further affiliation (*supra*, p. 4).

GROUND'S FOR MODIFYING THE DECREE SET FORTH IN THE GOVERNMENT'S MOTION

The Government's motion to modify the decree so as to continue the injunction against affiliation until January 1, 1943, set forth the following facts as grounds for the relief requested:

The primary purpose of the provisions of the decree relating to affiliation was to prohibit affiliation between Chrysler and any finance company, unless, as a condition subsequent, it developed in the Government's litigation against General Motors, that the United States, under the Sherman Act, could not enjoin affiliation between an automobile manufacturer and a finance company even

though affiliation had been an instrumentality and means for imposing restraints of trade of the kind charged in the bill of complaint filed against Chrysler and Commercial Credit (R. 59). A subsidiary purpose of these provisions was to protect the defendants against undue delay on the part of the Government in prosecuting its test case against General Motors, by providing that unless such proceeding had been successfully concluded by January 1, 1941, the prohibition against affiliation should lapse (R. 59-60). The United States has not been guilty of undue delay or laches in prosecuting its proceeding to divorce General Motors and G. M. A. C. but the proceeding cannot be finally concluded by January 1, 1942 (R. 60-61). One of the essential purposes of the decree will be defeated if the bar against affiliation be allowed to lapse prior to final determination of the pending action against General Motors (R. 60).

The motion sets forth (R. 61) that authority to grant the relief requested is conferred both by general equity principles and by the express provisions of ¶ 14 of the decree, which authorize any party to the decree to apply to the court at any time for "modification" of the decree (R. 44).

THE DISTRICT COURT'S FINDINGS AND CONCLUSIONS

The district court, before entering a decree modifying the consent decree by continuing the ban against affiliation with a finance company until January 1, 1943, made findings of facts and stated

separately its conclusions of law. Among the facts which the court found were: The provisions of ¶ 12 of the consent decree "were framed upon the basis that the ultimate rights of the parties thereunder should be determined by" the Government's civil antitrust proceeding against General Motors; "time was not of the essence with respect to lapse of the bar against affiliation"; the Government has proceeded "diligently and expeditiously" in its suit to divorce G. M. A. C. from General Motors; "further extension of the bar against affiliation will not impose a serious burden upon defendants" (R. 155-156).

The court concluded as a matter of law that it had jurisdiction to entertain the Government's motion and to make a proper order pursuant thereto and that the purpose and intent of the decree will be carried out if Chrysler is given the opportunity to propose at any time a plan for the acquisition of a finance company and to make a showing that such plan is necessary to prevent Chrysler "from being put at a competitive disadvantage during the pendency of" the Government's civil litigation against General Motors (R. 156).

SUMMARY OF ARGUMENT

There is ample support for the district court's finding that the consent decree was framed upon the basis that the ultimate rights of the parties respecting the prohibition against affiliation should be

determined by the outcome of the Government's proceeding to end the existing affiliation between General Motors and G. M. A. C. When the terms of the decree were being negotiated both Chrysler (and its affiliated finance company) and General Motors (and its affiliate, G. M. A. C.) were under indictment charged with having engaged in parallel but separate conspiracies in restraint of trade in violation of the Sherman Act. The consent decree entered against appellants gives comprehensive injunctive relief against the illegal conduct with which they were charged but the decree provides that its prohibitions shall later be adjusted to accord with the results achieved in the Government's litigation against General Motors and G. M. A. C. By so framing the decree, the parties provided that when the legal issues raised by the Government's charges were determined in the General Motors litigation, the decree against appellants would give effect to such determinations. They also thereby provided that the leading competitors, charged with the same illegal conduct, should ultimately be subjected to the same injunctive restraints.

The district court found that the parties did not intend to make time of the essence when they provided that the prohibition against affiliation should terminate on a specified date unless at that time divorcement of G. M. A. C. from General Motors had been finally decreed. Appellants' contention that the parties intended to make time of the

essence means that they intended to make the ban against affiliation dependent upon a gamble as to whether or not the divorcement proceeding against General Motors would be concluded by a given date. Appellants, however, concede that ending affiliation was a "principal purpose" of the Government's attack, and the bill of complaint on which the decree is based and the decree itself both show that the question of affiliation was regarded as of crucial importance. We therefore submit that it cannot reasonably be assumed that the purpose was to dispose of the question of affiliation on an essentially frivolous basis.

The district court's findings as to purpose do not make it necessary to treat the date specification in ¶ 12 as without effect and meaningless. Under its findings, the date specification would subject the Government to the considerable hazard involved in successfully procuring modification of the decree if it failed to conclude the divorcement proceeding by the given date. The specification therefore had the important effect of putting the Government under pressure to prosecute the divorcement proceeding diligently.

Material changes have occurred since entry of the decree which justify modification to keep alive the ban against affiliation. Questions which, because they were unsettled when the decree was entered, materially influenced the framing of the decree,

have since been set at rest. For example, it is settled that the conduct charged against appellants constituted a violation of the Sherman Act and that appellants will be permanently bound by the various prohibitions directed against coercive or discriminatory practices. In addition, the only reason advanced by appellants for viewing time as of the essence has, by reason of a radical change in conditions, become wholly inoperative. The reason so advanced is that Chrysler is put at a serious competitive disadvantage during such time as General Motors has, and Chrysler has not, a finance affiliate, and that therefore a definite time limit on the duration of this disadvantage was intended to be fixed. However, prior to the decree of modification which is here in issue, all manufacture of automobiles had been stopped by Government order. Obviously affiliation is not a competitive factor at a time when no new cars are being manufactured.

The Government has, as the district court found, prosecuted the proceedings against General Motors diligently and expeditiously. Accordingly, appellants cannot set up Government laches as a defense to the present action.

ARGUMENT

THE MODIFICATION IN THE DECREE MADE BY THE DISTRICT COURT SERVED TO EFFECTUATE ITS PURPOSES UNDER THE CHANGED CONDITIONS THEN EXISTING AND WAS THEREFORE WARRANTED

A. PRINCIPLES GOVERNING MODIFICATION OF A CONSENT DECREE

Appellants do not deny that the district court had the power to modify the decree which it had entered on November 15, 1938. Not only does the decree contain an express reservation of such power (R. 44) but, apart from this reservation, power to modify was vested in the court "by force of principles inherent in the jurisdiction of the chancery. A continuing decree of injunction directed to events to come is subject always to adaptation as events may shape the need." *United States v. Swift & Co.*, 286 U. S. 106, 114. And in *Ladner v. Siegel*, 298 Pa. St. 487, one of the cases cited as authority in the *Swift* case, the court said (p. 497) that a preventive injunction may be modified if the court which granted it believes that "the ends of justice would be served by a modification."

Appellants therefore do not contend that the decree of November 15, 1938, is immune from modification. Their contention is that facts sufficient to justify the change which the district court made were neither alleged nor proved and they cite *United States v. Swift & Co.*, 286 U. S. 106, as laying down the rule that no change will be made in a consent decree unless the moving party convincingly

shows that the decree, due to changes in conditions occurring since its entry, imposes on him materially greater burdens than those contemplated when the decree was entered.

In the *Swift* case the issue was whether the facts before the district court warranted it in striking down, at the defendants' request, one of the major prohibitions imposed by the decree. The grounds upon which the defendants requested this relief were that changes in economic and competitive conditions occurring subsequent to the decree (a) had increased the burden of the prohibition in question and (b) had eliminated danger of the evils which the prohibition was designed to prevent. This Court, finding that the proof failed to establish either of these propositions, refused to modify the decree.

The question which the Court deemed controlling in the *Swift* case was whether the objectives of the prohibition which the defendants sought to have eliminated would be weakened or obstructed by striking down the prohibition. The Court inquired into these objectives and its refusal to modify the decree was chiefly grounded upon the conclusion that no material change in the conditions which had led to adoption of the prohibition had been shown (286 U. S., 106, 115-119). The Court, having reached this conclusion, also considered the defendants' plea that changed conditions had made the decree oppressive in its effect. The Court in rejecting this plea said (p. 119):

No doubt the defendants will be better off if the injunction is relaxed, but they are not suffering hardship so extreme and unexpected as to justify us in saying that they are the victims of oppression. Nothing less than a clear showing of grievous wrong evoked by new and unforeseen conditions should lead us to change what was decreed after years of litigation with the consent of all concerned.

The present appellants heavily rely upon the last sentence in the above quotation. But it is directed at merely one of the factors open for consideration when modification of a consent decree is requested. It in no way qualifies the fact that the consideration given major emphasis in the opinion was whether the proposed change in the decree would promote, or whether on the contrary it might seriously impair, attainment of the objectives of the original decree.

In the *Swift* case the defendants were seeking modification. We do not contend that different principles apply where, as here, the moving party is the Government. We concede that in either case the moving party must show that the change which it requests will promote the objectives which the court and the parties had in mind at the time the decree was entered. Nevertheless, a defendant seeking escape from obligations to which it has assented may well be held to a stricter showing than where the Government seeks alteration in the terms

of a consent decree. A defendant so seeking escape is to be regarded as one whose wrongdoing has led to the imposition of certain restraints and these restraints are regarded as the relief which the court and parties deemed appropriate to prevent recurrence of wrongdoing.⁷ The Government, on the other hand, brings a Sherman Act proceeding in order to vindicate a public right, by securing adherence to the requirements of the statute. "Courts of equity may, and frequently do, go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved." *Virginian Ry. Co. v. System Federation No. 40*, 300 U. S. 515, 552.

Accordingly, if the Government, in moving for change in a consent decree, shows that circumstances have arisen which will bring about a defeat of its purposes unless the requested change is made, this would appear to establish at least a *prima facie* case for modification.

⁷ This is so although the decree contains a recital that it shall not constitute an adjudication that the defendant has violated the law. There was such a recital in the decree in the *Swift* case (see p. 111), but the Court there said (p. 120) that what had been decreed with the consent of all concerned would not lightly be undone "at the suit of the offenders."

B. THE DISTRICT COURT PROPERLY MODIFIED THE DECREE IF ITS FINDINGS AS TO THE PURPOSES OF THE ORIGINAL DECREE ARE VALID

The original decree entered in this case bars Chrysler from acquiring an interest in any finance company. It also provides that if a final decree requiring General Motors to dispose of all its interest in G. M. A. C. has not been entered by January 1, 1941, this prohibition shall lapse. The same district judge who, after a hearing, entered the original decree has found that the purpose of these provisions was that the ultimate rights of the parties respecting affiliation should "be determined by" the outcome of the Government's proceeding to terminate General Motors' affiliation with its subsidiary finance company, G. M. A. C.; that time was "not of the essence" with respect to lapse of the bar against affiliation; that the Government has not been guilty of laches in prosecuting its civil proceeding against General Motors; that continuation of the bar against affiliation during 1942 will not seriously burden the defendants.

Appellants' entire argument is directed toward the alleged error in these findings. They do not seem to question the propriety of the change in the decree made by the district court if, in fact, its findings are correct. In any event, there can be no doubt as to the propriety of the court's action, assuming the validity of its findings. Upon this assumption, enlargement of the period during

which affiliation is barred merely adapts the provisions of the decree to circumstances which have arisen since its entry, so as to prevent defeat of its objectives through adherence to the letter of the decree. Plainly, in this situation "the ends of justice would be served by a modification" (*Ladner v. Siegel*, 298 Pa. St. 487, 497).

C. THE FACTS BEFORE THE DISTRICT COURT AMPLY SUPPORT ITS FINDINGS AS TO PURPOSE

Appellants contend (Br., pp. 11-14) that the language of the provision as to lapse of the bar against affiliation is clear and unambiguous, that the court may therefore not look beyond the face of this provision to ascertain purpose, and that, since nothing appearing on the face of the provision supports the district court's findings as to purpose, these findings are erroneous.

This contention might be sound if the issue here were the proper construction of the meaning of the provision of the decree relating to lapse of the bar against affiliation. But the issue here is not what this provision means but what was the objective which the court and the parties intended to achieve when this provision was adopted. In ascertaining such objective the court, we submit, is not compelled to confine its consideration to this particular provision, which forms an integral part of a decree containing numerous interrelated and supplementary provisions.

It is elementary that a court determines the purposes of a statute from an examination of its provisions in their entirety and from such evidence as to purpose as legislative history may disclose. So here, in determining purpose, it is proper to consider the circumstances under which the decree was entered, its scope and structure as a whole, and the evils which the decree was designed to prevent as these are disclosed by the allegations of the bill of complaint upon which the decree is based (*United States v. Swift & Co.*, 286 U. S. 106, 115-116).*

In determining the purpose of the affiliation provisions of the present decree it is necessary to keep in mind that at the time its terms were being negotiated each of the three leading manufacturers of automobiles was under indictment for violation of the Sherman Act. Each of these indictments, charged the same kind of unlawful conduct, namely,

* The fact that the defendants in their answers to the bill traversed its charges (R. 15) and that the decree recites that it shall not constitute an adjudication that the defendants had violated any law (R. 24) does not alter the fact that the parties agreed that the decree should be entered to give relief against, not abstract or unknown wrongdoing, but the specific unlawful conduct charged in the bill. In the *Swift* case (see p. 111) the charges of the bill were likewise traversed and there was a like recital in the decree.

The jurisdiction of the court in entering a consent decree is conferred by and rests upon the allegations of the bill of complaint. *Swift & Co. v. United States*, 276 U. S. 311, 326, 327, 329.

a conspiracy between the defendant manufacturer and a finance company affiliated with it to exclude other finance companies from financing interstate commerce in the manufacturer's cars, and each charged effectuation of the conspiracy by the same coercive and discriminatory practices (*supra*, pp. 6-7). Two of the manufacturers were willing to assent to decrees giving relief against the restraints of trade charged in these indictments, but the consent decree manifests on its face that this assent was subject to the condition that the restraints imposed should fall unless the Government succeeded in later procuring like relief against their principal competitor, General Motors (*supra*, pp. 7, 9-11).

This basis for framing the decree was reasonable from the standpoint of all concerned. The decree was to be entered without submitting the issues raised by the Government's charges to the test of litigation, but it was contemplated that the Government's proceedings against General Motors would provide such test. Accordingly, the decree provides, in substance, that its prohibitions shall later be adjusted to accord with the results achieved in the litigation against General Motors. Such provision was equitable to all concerned because it would lead to imposition of like legal restraints upon the three leading units in the industry, each of which was charged with like illegal conduct.

In a decree framed upon this basis appellants were entitled to protection against undue delay in

the prosecution of the proceedings against General Motors. Such protection might have been given by providing for suspension or termination of the prohibitions upon a showing of unreasonable delay by the Government in prosecuting these proceedings.⁹ Another method of affording such protection, and the one actually adopted, was to set up a sort of timetable for the proceedings against General Motors. In the case of the prohibitions against coercive and discriminatory practices, the date set was January 1, 1940. If by that date General Motors had not been convicted in the criminal proceeding or a decree not subject to further review had not been entered against it, these prohibitions were to be suspended (*supra*, p. 10). In the case of the prohibition against affiliation, the date set was January 1, 1941. If by that date a decree not subject to further review had not been entered ending General Motors' affiliation with G. M. A. C., the prohibition was to be no longer operative.

The provision that the bar against affiliation shall terminate on a specified date if divorcement of General Motors and G. M. A. C. has not then been finally decreed is not inconsistent with the view that the purpose of the parties was to have the bar against affiliation governed by the outcome of the divorcement proceeding against General Motors. There is no inconsistency if the parties,

⁹ See *Chrysler Corp. v. United States*, No. 40, this Term, Record, p. 111.

in framing the decree, acted upon the belief that General Motors would either assent to a decree ending its affiliation with G. M. A. C. or would assent to a decree disposing of all issues other than that of affiliation, and that its right to maintain a finance-company subsidiary would therefore be finally determined prior to January 1, 1941.¹⁰ The parties may have also acted upon the belief that if on that date the Government had successfully prosecuted the criminal proceeding and had instituted a divorce proceeding which had not been finally determined, the decree would be modified either with the assent of the defendants¹¹ or by court order so as to prevent lapse of the bar against affiliation prior to final determination of that proceeding.

The district court's view as to the purpose of the affiliation provisions does not make it necessary to treat as nugatory the provision in the decree that the bar against affiliation should expire on January 1, 1941, if divorce of General

¹⁰ If the litigation against General Motors had been confined to a civil proceeding to compel divorce, something over two years would be a reasonable time in which to obtain final decision. Trial of the criminal proceeding against General Motors was completed in November 1939 (R. 84A-84D). An equally prompt trial decision in the civil proceeding would have allowed more than a year to obtain decision on direct appeal to this Court.

¹¹ The Ford defendants, against whom a like consent decree was entered, assented to continuation of the bar against affiliation. See Record in *Chrysler Corp. v. United States*, No. 40, this Term, pp. 67-68.

Motors and G. M. A. C. had not then been decreed. Under the district court's findings of purpose this provision would subject the Government to the considerable hazard involved in procuring modification of the decree if it failed to obtain divorce by the specified date. The direct and indirect effect of the provision, therefore, would be to put the Government under pressure to expedite its proceedings against General Motors.

The view of the district court that the primary purpose of the decree was to make Chrysler's right to be free from the bar against affiliation dependent upon nonperformance of the specified act, (*i. e.*, obtaining a final decree divorcing General Motors and G. M. A. C.) rather than upon the time of performance, is in accord with well-settled rules of contract interpretation. Courts of equity in this country as well as in England "have treated stipulations as to time as subsidiary and of comparatively little importance, unless either the language of the parties or the nature of the case imperatively indicated that the date of performance was vital." 3 Williston, *Contracts* (1936), sec. 845. And "where an express condition is the performance of an act, and it is provided that the act shall be done at a certain time, an interpretation will be favored which makes only the act the condition and the provision as to time merely a collateral stipulation" (*ibid.*).¹² In many types of

¹² See *Restatement of Contracts*, secs. 250, 276.

contracts, such as those for the payment of money, building contracts, contracts of service, and contracts for the sale of land, time is not ordinarily of the essence (*id.*, secs. 848-850, 852).

Appellants' contention is that the purpose of the affiliation provisions was that nonperformance of the specified act on January 1, 1941, should operate as a final and absolute release of Chrysler from the bar against affiliation, irrespective of what the circumstances were at that time. Appellants' contention, in short, is that the bar against affiliation was a purely gambling proposition—if divorcement of General Motors and G. M. A. C. had been finally decreed by January 1, 1941, the ban on affiliation was to be permanent; if not, the ban was to be merely temporary. This view means that if on January 1, 1941, the illegality of a conspiracy such as that charged in the bill of complaint on which the consent decree was entered had been settled by final victory for the Government in the criminal proceeding against General Motors and if on January 1, 1941, there was outstanding a decree directing divorcement of G. M. A. C. from General Motors and appeal from such decree had been argued before this Court and an opinion delivered affirming the decree but the mandate had not gone down, Chrysler nevertheless was to be released from the prohibition against affiliation. This is the position appellants must defend. Nothing short of it will sustain their contention as to purpose.

To view the decree as dealing with affiliation on such a basis would be reasonable only if it appeared that the parties to the decree regarded the question of affiliation or nonaffiliation as of merely minor or incidental importance. That this was not the case is expressly conceded by appellants. They state (Br., pp. 16-17):

The heart of the Government's attack on Chrysler, Ford, and General Motors in all these finance company cases was the great benefit to these motor companies of having finance companies as affiliates. *A principal purpose of the Government's attack was to end the affiliation.* [Italics ours.]

Appellants' contention therefore reduces to this: although ending affiliation was a principal purpose of the Government's attack, the parties intended to provide for disposition of this matter on a gamble as to whether the final decree against General Motors could be obtained within the specified time limit.

Manifestly, the parties did not intend to dispose of the question of affiliation on such a frivolous basis. The bill of complaint shows that affiliation was regarded as the root of the illegal restraints of trade charged therein. It charged that General Motors, Chrysler, and Ford was each affiliated with a finance company (R. 6-7) and that each had conspired with its affiliate to restrain interstate commerce in the manufacturer's cars by excluding other finance companies from the financing of such

commerce (R. 8). It thus appears from the bill that affiliation had led to a common pattern of behavior and that affiliation was deemed an inducing and contributory cause of the restraints alleged. The decree strikes down both the symptoms of the evil, coercive and discriminatory practices, and the source of the evil, affiliation. The decree also provides that both types of prohibition shall fall unless the Government's right to such relief is upheld (either by the defendants' consent or by judicial decision) in the General Motors litigation, but it is hardly reasonable to suppose that, in addition, the parties intended that the permanency of the ban against affiliation—the root of the evil—should be determined by a mere gamble on how rapidly the test litigation against General Motors was brought to a conclusion.

In addition, the decree contains elaborate provisions designed to assure fair and free competition in the business of financing Chrysler's cars (R. 26-37). Affiliation between Chrysler and a finance company seems incompatible with attainment of this end. Since retention of Chrysler's good-will is of supreme importance to its dealers,¹³ many of them would, even without coercion, use the services of any finance company with which Chrysler was affiliated. Moreover, with affiliation existing, Chrys-

¹³ The bill of complaint alleges that the Chrysler dealer contracts are subject to cancellation at the will of Chrysler (R. 5).

ler would be under the constant incentive to give the affiliate favored treatment, action which the decree seeks to prevent by various specific prohibitions and requirements (R. 26-29). Since, therefore, affiliation would materially weaken the effectiveness of the decree in achieving its objective of fair dealing and equal opportunity for all in the financing of Chrysler cars, it cannot reasonably be assumed that the intent was to have the permanency of the ban against affiliation abide the result of a gamble.

Appellants suggest (Br., p. 18) that even if the bar against affiliation should fall, the interests of the Government will be sufficiently protected since it will not be barred from attacking in an independent proceeding any new affiliation which may later be formed. But insofar as the Government's right to relief against affiliation would be buttressed or enlarged by showing that affiliation had been linked with the illegal conspiracy charged in the Government's bill of complaint in this case, the Government would, under appellants' interpretation of purpose, be relinquishing the right to make this showing in exchange for a prohibition of uncertain duration. It is no answer to say that the decree leaves the Government free to litigate the legality of appellants' future acts or conduct. This is no more than the right and duty to enforce the statute which is necessarily vested in the Government at all times.

Appellants attempt to justify an alleged intent to free Chrysler on a given date from the prohibition against affiliation by urging (Br., pp. 17-18) that the decree put Chrysler at a serious competitive disadvantage with General Motors during the period between entry of the decree and such time as General Motors' affiliation with G. M. A. C. might be terminated. The attempted showing is, we submit, far from convincing. No showing is made that affiliation gives General Motors a competitive advantage in the sale of its cars. The fact that any earnings of its finance company during this period would accrue to General Motors might or might not increase its over-all earnings.¹⁴ But assuming that affiliation in this period increased over-all earnings, this has no more effect on competition in the sale of automobiles than would ownership by General Motors, but not by Chrysler, of

¹⁴ Chrysler disposed of its Commercial Credit stock in or about February 1938 (R. 19), which was after a grand jury investigation of its practices had been instituted. (see Record in *Chrysler Corp. v. United States*, No. 40, this Term, pp. 86-87). The high and low price of Commercial Credit common stock in January-February 1938 was $38\frac{3}{4}$ - $31\frac{1}{8}$, with the midway price thus 35 (*Commercial and Financial Chronicle*, vol. 146, p. 1504). The 1942 high and low price for this stock is $187\frac{7}{8}$ - $161\frac{1}{8}$, with the midway price thus $174\frac{1}{2}$ (*New York Times*, April 20, 1942). In other words, if Chrysler had retained its 50,000 shares of Commercial Credit stock (R. 17), it would, on the basis of market value, have suffered a loss of \$875,000, representing a 50% asset impairment.

a company manufacturing electric refrigerators, or airplanes, or any other product.

If other than competitive factors are assumed to have been in the minds of the parties in framing the decree, then it should be noted that substantial advantages accrued to Chrysler from its acceptance of the decree. By such acceptance it escaped the heavy direct and indirect costs of a criminal trial as well as of an equity trial, burdens which General Motors faced and, in part, still faces. Chrysler's acceptance of the consent decree also enabled it to escape entry of a judgment that it had violated the Sherman Act, a judgment which would be prima facie evidence against it if sued for triple damages under Section 7 of the Sherman Act on account of injury resulting from its violation of the statute.¹⁵

D. MATERIAL CHANGES IN CIRCUMSTANCES AND CONDITIONS OCCURRING SINCE ENTRY OF THE DECREE JUSTIFY THE DECREE OF MODIFICATION ENTERED BY THE DISTRICT COURT

When the district court acted upon the Government's motion for modification, the circumstances existing at the time the consent decree was entered had materially changed. In the interim the question whether the conspiracy charged against appellants infringed the prohibitions of the Sherman Act had been decided affirmatively by the Circuit

¹⁵ See Section 5 of the Clayton Act, 38 Stat. 731, 15 U. S. C., sec. 16.

Court of Appeals to which appeal lay and this Court had twice refused to review that decision. *United States v. General Motors Corp.*, 121 F. (2d) 376, certiorari denied October 13, 1941, rehearing denied November 10, 1941, No. 352, this Term. By reason of these facts, the question which was open when the decree was entered, whether Chrysler would be permanently bound by the comprehensive prohibitions and requirements of ¶ 6 of the decree, had also been decided in the affirmative.¹⁶ It follows that events occurring since entry of the decree had vitally altered the situation, in that matters which the parties deemed to be of the highest moment and which were merely conjectural when the decree was entered, had subsequently been converted into certainties.

A further change of great consequence has occurred since the entry of the decree. Appellants (Br., p. 17) offer only one reason or explanation for the

¹⁶ It is true that the decree still left open certain contingent, future, or conjectural avenues of escape. These were: (a) To apply successfully for modification of the decree (¶ 14, R. 44); (b) To apply successfully to the court, after November 15, 1942, for vacation of the decree in whole or in part (¶ 18, R. 47); (c) To obtain a suspension of requirements of ¶ 6 which had not been ruled to be illegal in the criminal proceeding (¶ 12a, R. 42-43); (d) To show that a competitor (other than General Motors or Ford) had sold 25% as many automobiles as Chrysler, that practices of such competitor, prohibited by the decree, put Chrysler at a competitive disadvantage, and that the United States had not proceeded diligently to adjudicate the illegality of such practices (¶ 15, R. 45).

alleged purpose to give Chrysler an absolute release on a specified date provided General Motors' affiliation with G. M. A. C. had not then been finally prohibited, namely, that since to prohibit Chrysler from affiliating at a time when General Motors is not so prohibited imposes a competitive burden on Chrysler, a definite time limit for the duration of this burden was intended to be fixed. While the alleged competitive burden appears to be without substance (*supra*, pp. 32-33), what is now important is that a radical change in conditions occurring since entry of the decree has eliminated any possibility of putting Chrysler at a competitive disadvantage by extending the ban against affiliation to January 1, 1943.

Affiliation with a finance company can confer a competitive advantage on a manufacturer of automobiles only if automobiles are currently manufactured and sold. But prior to the decree of modification entered by the district court on February 16, 1942, all manufacture of passenger automobiles and light trucks had ceased pursuant to orders issued on January 21, 1942, by the Director of Priorities of the Office of Production Management (F. R. Docs. 42-636, 42-637, 7 F. R. 473). Even on appellants' view as to purpose, therefore, continuation of the ban against affiliation is not in conflict with the intended objective.

Appellants, recognizing that their attack on the district court's decree of modification is seriously undermined by the termination of automobile

manufacture, urge (Br., pp. 18-19) that an affiliated finance company might extend aid to hard-pressed dealers which otherwise might not be available to them; that affiliation thus provides the means for preserving the manufacturer's dealer organization, its "most priceless treasure." We submit that the implication that Chrysler could not aid dealers just as easily itself as through a finance affiliate is wholly fallacious. Chrysler may, if it so chooses, repurchase cars now in the hands of its dealers, leaving them as custodians of the cars with power of resale. Such an arrangement and others that could be made would be of at least as great assistance to dealers as extension of credit by a finance affiliate.

The district court's interpretation of the decree fully safeguards Chrysler's interests in the event that continuation of the bar against affiliation should prove to be a competitive disadvantage. The court, on the basis of the power to modify conferred by ¶ 14 of the decree, ruled as a matter of law (R. 156):

That the purpose and intent of the decree will be carried out if Chrysler is given the opportunity at any future time to propose a plan for the acquisition of a finance company, and to make a showing that such plan is necessary to prevent Chrysler Corporation from being put at a competitive disadvantage during the pendency of complainant's civil litigation against General Motors Corporation, et al.

E. THE GOVERNMENT HAS NOT BEEN GUILTY OF LACHES IN PROSECUTING ITS PROCEEDINGS AGAINST GENERAL MOTORS

Notwithstanding the considerations to which we have referred (*supra*, pp. 23-36), possibly the district court would have been justified in refusing to extend the bar against affiliation if the Government had been guilty of laches in prosecuting its proceeding to divorce G. M. A. C. from General Motors. The district court found that this was not the case, that the Government had proceeded "diligently and expeditiously" in this matter (R. 156). The facts fully sustain this finding.

It was obviously neither feasible nor in the public interest to prosecute the criminal and civil cases against General Motors simultaneously. Since they were based on the same conspiracy charge, simultaneous proceedings would have involved the expense and burden of trying the same issue twice.¹⁷ This could be avoided by prior trial of the criminal cause since judgments of conviction there would render the question of conspiracy *res judicata* in the civil proceeding (*Local 167 v. United States*, 291 U. S. 293, 294, 295, 298-299). The fact that the court in the civil proceeding granted continuances over the Government's opposition even after the Circuit Court of Appeals had affirmed the criminal

¹⁷ The burden and expense of such double trial is indicated by the size of the record in the criminal case. The record as presented to this Court on petition for certiorari was over 4,000 pages (*General Motors Corp. v. United States*, No. 352, this Term).

convictions¹⁸ sufficiently shows that trial of the civil case was not delayed by not instituting that action until October 1940 (R. 68, 85) or by the Government's assent to extending the defendants' time for pleading pending decision by the Circuit Court of Appeals on the appeal from the criminal convictions (R. 91, 95-96, 97-98, 101-102, 104A, 126A).

F. THE GOVERNMENT DID NOT PURSUE THE WRONG REMEDY IN PROCEEDING BY MOTION

Appellants contend (Br., pp. 20-21) that the Government could obtain modification of the decree only by filing a supplemental complaint pursuant to Rule 15 (d) of the Rules of Civil Procedure. We submit that a motion was the proper form of proceeding. The Government was applying to the court for an order modifying the decree. Rule 7 (b) of the Rules of Civil Procedure provides: "An application to the court for an order shall be by motion." The Government's motion conformed to the requirement of this rule that the motion "shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought."

The only difference in substance between proceeding by motion and proceeding by supplemental complaint is that Rule 15 (d) of the Rules of Civil Procedure provides for securing permission of the

¹⁸ R. 61, 131, 133, 135-136, 138, 143, 149, 153.

court, after notice to the adverse party, before filing a "supplemental pleading." But § 14 of the consent decree authorizes "any of the parties to this decree to make application to the court at any time * * * for the modification" of the decree (R. 44). This provision expressly authorizing application to the court for modification of the decree rendered it unnecessary to secure the permission of the court before making such application. It was therefore wholly immaterial whether the Government designated its application for modification a motion or a supplemental complaint.

Appellants were served with notice of the motion for modification and they filed a written answer thereto (R. 57-58, 63).

CONCLUSION

It is respectfully submitted that the decree of the district court should be affirmed.

CHARLES FAHY,
Solicitor General.

✓ THURMAN ARNOLD,
Assistant Attorney General.

CHARLES H. WESTON,
Special Assistant to the Attorney General.

APRIL 1942.



p. 3.

SUPREME COURT OF THE UNITED STATES.

No. 1036.—OCTOBER TERM, 1941.

Chrysler Corporation, De Soto Motor Corporation, Plymouth Motor Corporation, Dodge Brothers Corporation and Chrysler Sales Corporation, Appellants,

vs.

The United States of America.

On Appeal from the District Court of the United States for the Northern District of Indiana.

[June 1, 1942.]

Mr. Justice BYRNES delivered the opinion of the Court.

On May 27, 1938, an indictment was returned against appellants (referred to hereafter as Chrysler) and Commercial Credit Company and certain subsidiaries of the latter in the District Court for the Northern District of Indiana. Two similar indictments were returned on the same day, one against Ford Motor Company and certain finance companies affiliated with it and the other against General Motors Corporation and General Motors Acceptance Corporation, its subsidiary. The gist of each of these indictments was that the automobile manufacturer had combined and conspired with its affiliated finance company or companies to restrain trade and commerce in the wholesale and retail sale and financing of its automobiles, in violation of the Sherman Act.¹

During the ensuing months Chrysler and Ford reached an agreement with the government that the indictments against them would be quashed and consent decrees entered. Consequently, on November 7, 1938 bills of equity were filed against Chrysler and Ford, praying for injunctions against the acts complained of. Answers were filed² and on November 15, 1938 the consent decrees were entered.

The lengthy decree against Chrysler need not be described in detail.³ Paragraph 6 imposed numerous specific restraints upon

¹ 26 Stat. 209, 15 U. S. C. § 1.

² Chrysler's answer included an allegation that it had completely terminated its affiliation with Commercial Credit Company by February, 1938.

³ The consent decree against Ford is substantially the same.

discriminatory practices by Chrysler in favor of Commercial Credit Company. ⁶ Paragraph 7 imposed correlative restraints upon Commercial Credit Company in its dealings with Chrysler. Paragraph 12A contained alternative provisions depending upon the outcome of the then still pending criminal proceedings against General Motors. It provided: (1) that if those proceedings should not result in conviction every provision of this consent decree against Chrysler should be suspended until such time as a substantially identical decree should be obtained against General Motors; or (2) that upon conviction of General Motors in the criminal proceedings or upon the entry of a decree in a civil action against General Motors or upon January 1, 1940—whichever should occur first—Chrysler should be free of all restraints imposed by paragraph 6 to the extent that substantially identical restraints had not been imposed upon General Motors by the verdict of guilty or by the civil decree and until such restraints were imposed.

The question before us concerns paragraph 12, which is separate and distinct from paragraph 12A. Paragraph 12 forbade Chrysler to "make any loan to or purchase the securities of" Commercial Credit Company or any other credit company. It then provided:

"It is an express condition of this decree that notwithstanding the provisions of the preceding paragraph of this paragraph 12 and of any other provisions of this decree, *if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1941, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in the event, nothing in this decree shall preclude the manufacturer [Chrysler] from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order or modification or suspension thereof entered pursuant to paragraph 12a* [emphasis added]".

Affiliation between Chrysler and Commercial Credit Company or another finance company was thus singled out for special treatment in paragraph 12. The various restraints imposed by paragraphs 6 and 7 were subject to termination upon the contingencies described in paragraph 12A, but the prohibition against affiliation was subject to expiration upon the distinct and different contingency described in paragraph 12, viz., the entry of "an effective

final order or decree not subject to further review . . . on or before January 1, 1941, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein

Jurisdiction of the cause was retained by the District Court, in paragraph 14, for the purpose of enabling the parties to apply at any time "for such further orders and directions as may be necessary or appropriate in relation to the construction of or carrying out of this decree" or "for the modification thereof".

The criminal proceedings against General Motors resulted in conviction of the corporation on November 17, 1939. 121 F. 2d 376. General Motors appealed to the Circuit Court of Appeals for the Seventh Circuit. On May 1, 1941 that Court affirmed the conviction and on July 2, 1941 denied rehearing. A petition for certiorari was denied on October 13, 1941 (314 U. S. —). A petition for rehearing was denied on November 10, 1941. 314 U. S. —.

Meantime, a civil suit for an injunction had been instituted by the government against General Motors on October 4, 1940 in the District Court for the Northern District of Illinois. On October 26, 1940 the government agreed to an extension of time to answer to January 20, 1941. This extension of time rendered it impossible for the government to obtain "an effective final order or decree" against General Motors before January 1, 1941, as required by paragraph 12 of the consent decree against Chrysler. Accordingly, on December 17, 1940, the government filed a motion in the District Court in Indiana asking that paragraph 12 of the consent decree against Chrysler be modified by substituting "January 1, 1942" for "January 1, 1941". Chrysler opposed this motion, but on December 21, 1940 an order was entered changing the date as requested. Chrysler appealed to this Court from the order of modification, but the appeal was dismissed on December 8, 1941 for want of a quorum of Justices qualified to sit (— U. S. —) and on January 5, 1941 rehearing was denied. — U. S. —. 194

Pursuant to additional stipulations between the government and General Motors the time to answer the government's complaint in the civil suit in the Illinois District Court was successively extended to January 27, 1941, to May 1, 1941, to June 15, 1941, and to June 21, 1941. On the latter date, the government filed an amended complaint. By agreement the time in which to answer

this amended complaint was extended to July 15, 1941. General Motors then sought a further extension of time to answer the amended complaint, urging that the civil suit should be postponed pending a final determination of the criminal case and that it was about to petition for a writ of certiorari in the criminal case. The government refused to agree to an extension, stating that any further delay might prejudice the government in connection with its consent decree against Chrysler. The District Court nevertheless entered an order for an indefinite extension of the time in which General Motors might answer the amended complaint. On December 1, 1941 the government moved the District Court to set a day certain by which General Motors would be required to answer and otherwise plead. In the motion and in an accompanying affidavit the government explained the connection between the consent decree against Chrysler and the civil suit against General Motors. After a hearing on the motion the District Court set January 15, 1942 as the date by which General Motors would be required to answer.

The date fixed by the last mentioned order of the District Court in Illinois in the suit against General Motors created further difficulty with respect to the consent decree in the Chrysler case in the District Court of Indiana. It had now become impossible for the government to obtain "an effective final order or decree" against General Motors, within the meaning of paragraph 12 of the Chrysler consent decree, prior to January 1, 1942. On December 22, 1941, therefore, the government moved the District Court in Indiana for a second modification of paragraph 12 of the Chrysler consent decree by substituting "January 1, 1943" for "January 1, 1942". In its answer Chrysler opposed the modification. The government offered in evidence a transcript of the proceedings in the civil suit against General Motors. Hearing on the motion was continued to February 16, 1942. On that date no additional evidence was introduced, but argument of counsel was heard.

The District Court thereupon made the following findings of fact: (a) that the District Court had specifically retained jurisdiction to modify the consent decree; (b) that paragraph 12 was "framed upon the basis that the ultimate rights of the parties thereunder should be determined by the government's civil antitrust proceedings against General Motors Corporation and affiliated companies"; (c) that "time was not of the essence with respect

to lapse of the bar against affiliation [between Chrysler and Commercial Credit Company or any other finance company]"; (d) "that safeguard defendants against undue delay in such proceedings the decree provided for suspension of certain of its prohibitions in the event convictions were not obtained in the criminal case against General Motors Corporation by January 1, 1940"; (e) "that the decree provided for a termination of the bar against affiliation, if the civil proceedings against General Motors Corporation were not successfully concluded by a court of last resort by January 1, 1941"; (f) that a conviction had been obtained in the criminal proceedings against General Motors on November 17, 1939; (g) "that the government has proceeded diligently and expeditiously in its suit to divorce General Motors Acceptance Corporation from General Motors Corporation"; and (h) "that further extension of the bar against affiliation will not impose a serious burden upon defendants". It then concluded as a matter of law "that the purpose and intent of the decree will be carried out if Chrysler is given the opportunity at any future time to propose a plan for the acquisition of a finance company, and to make a showing that such plan is necessary to prevent Chrysler Corporation from being put at a competitive disadvantage during the pendency of complainant's civil litigation against General Motors Corporation, et al."

Upon the basis of these findings and conclusions, the District Court entered an order modifying paragraph 12 by changing the date to January 1, 1943, in compliance with the government's motion. The case is before us on direct appeal from this order. 15 U. S. C. § 29, 28 U. S. C. § 345.

It is clear that under paragraph 14 of the original decree the District Court had jurisdiction to modify it. The question is whether the change in date in paragraph 12 amounted to an abuse of this power to modify. We think that the test to be applied in answering this question is whether the change served to effectuate or to thwart the basic purpose of the original consent decree. *United States v. Swift & Co.*, 286 U. S. 106.

The text of the decree itself plainly reveals the nature of that purpose. It was, as stated in the District Court's findings, "that the ultimate rights of the parties thereunder should be determined by the government's civil antitrust proceedings against General Motors and affiliated companies." The time limitation was in-

served to protect Chrysler from being placed at a competitive disadvantage in the event that the government unduly delayed the initiation and prosecution of the General Motors injunctive proceedings. The District Court found "that the government has proceeded diligently and expeditiously in its suit to divorce General Motors Acceptance Corporation from General Motors Corporation." There is room for argument that this statement is markedly generous to the government, inasmuch as the civil suit against General Motors was not instituted until almost two years after the entry of the consent decree and only three months prior to the limiting date in paragraph 12. But the finding is supported by several circumstances: the extended course of the appeals in the criminal proceedings against General Motors, for which the government was not responsible; the obvious bearing of the results in that litigation upon the method of handling the civil litigation with General Motors; and the ruling of the District Court in Illinois in July, 1941 in the General Motors civil action indefinitely extending the time to answer despite the government's objection, presumably to await the final disposition of the criminal case. In view of these considerations the finding of the court below was not unreasonable and we do not think that the government lost its right to seek a modification of the decree.

The controlling factor thus becomes whether the extension of the ban on affiliation contained in paragraph 12 places Chrysler at a competitive disadvantage. Chrysler made no showing to that effect in the District Court. The order of December 21, 1941 set the hearing for February 16, 1942 with the explanation that Chrysler had "requested a continuance in order to produce further evidence". But on February 16 no evidence was forthcoming. The record therefore reveals that Chrysler terminated its affiliation with Commercial Credit in 1938 before the consent decree was entered and does not reveal that it has since asserted any desire or intention to affiliate with Commercial Credit or with any other finance company. Moreover, we cannot be blind to the fact that the complete cessation of the manufacture of new automobiles and light trucks has drastically minimized the significance of the competitive factor. Consequently there is no warrant for disturbing the finding of the court below "that further extension of the bar against affiliation

⁴ See the order of January 21, 1942 of the Director of Priorities of the Office of Production Management. F. R. Docs. 41-636, 42-637, 7 F. R. 473.

will not impose a serious burden upon defendants." If Chrysler desires to affiliate with a finance company and feels that its inability to do so places it at a disadvantage with its competitors, it should make such a showing to the District Court. That court expressly declared that Chrysler was free at any time to propose a plan for affiliation and to demonstrate that such a plan is necessary to avoid unfairness.

Affirmed.

Mr. Justice ROBERTS, Mr. Justice MURPHY and Mr. Justice JACKSON took no part in the consideration or decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.

SUPREME COURT OF THE UNITED STATES.

No. 1036.—OCTOBER TERM, 1941.

Chrysler Corporation, De Soto Motor Corporation, Plymouth Motor Corporation, Dodge Brothers Corporation and Chrysler Sales Corporation, Appellants,

vs.

The United States of America.

Appeal from the District Court of the United States for the Northern District of Indiana.

[June 1, 1942.]

Mr. Justice FRANKFURTER, dissenting.

In the spring of 1938 the Government instituted criminal proceedings against the three leading automobile manufacturers, Chrysler, Ford, and General Motors. For present purposes Ford may be disregarded. Each indictment charged violation of the Sherman Law arising out of the manufacturer's affiliation with a finance company and its employment of certain trade practices. Chrysler was prepared to consent to a decree prohibiting it from affiliation with any finance company, in addition to its acceptance of restraints against alleged illegal trade practices, provided, however, that the Government succeeded in obtaining similar relief against General Motors. The problem before the negotiators of the consent decree was, therefore, that of determining how long Chrysler should remain subject to the restraints imposed by the decree while General Motors, contesting the claims of the Government, refused to come to terms with it and put it to its law. As the Government recognizes in its brief here, Chrysler was "entitled to protection against undue delay in the prosecution of the proceedings against General Motors". With respect to the prohibition against affiliation, the problem was solved by providing in paragraph 12 that if the Government should not have obtained a final decree against General Motors by January 1, 1941, requiring General Motors to divest itself of all interest in its affiliated finance company, the prohibition against Chrysler would cease. This was made an "express condition" notwithstanding any other pro-

visions in the decree.¹ Obviously, it was an essential feature of the consent decree against Chrysler that the prohibition of affiliation with the finance company should result in this great competitive disadvantage only long enough to enable the Government to press its claim against General Motors to successful conclusion with all reasonable speed. The parties might have refrained from fixing any definite period, leaving the matter wholly for determination in the future and by undefined standards of reasonableness. Instead, the Government chose to specify with particularity the length of the period—more than two years—in which Chrysler would be required to bear competitive hardships resulting from the lack of the same restraints upon General Motors.

Considering the scope and nature of the decree, the interests, both public and private, with which it was dealing, and its technical draftsmanship, there can be no doubt that the precise limits of paragraph 12 were not casually or carelessly defined. Of course, the District Court had the power to modify the consent decree in

¹ The full text of Paragraph 12 is as follows:

"The Respondent Finance Company shall not pay to any automobile manufacturing company and the Manufacturer shall not obtain from any finance company any money or other thing of value as a bonus or commission on account of retail time sales paper acquired by the finance company from dealers of the Manufacturer. The Manufacturer shall not make any loan to or purchase the securities of Respondent Finance Company or any other finance company, and if it shall pay any money to Respondent Finance Company or any other finance company with the purpose or effect of inducing or enabling such finance company to offer to the dealers of the Manufacturer a lower finance charge than it would offer in the absence of such payment, it shall offer in writing to make, and if such offer is accepted, it shall make, payment upon substantially similar bases, terms and conditions to every other finance company offering such lower finance charge; provided, however, that nothing in this paragraph contained shall be construed to prohibit the Manufacturer from acquiring notes, bonds, commercial paper, or other evidence of indebtedness of Respondent Finance Company or any other finance company in the open market.

"It is an express condition of this decree that notwithstanding the provisions of the preceding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1941, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a. The Court, upon application of the respondents or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted."

order to effectuate its basic purposes. The fact that the decree embodied the agreement of the parties no more limited the power of the court than if it had been a contested decree. *Swift & Co. v. United States*, 276 U. S. 311; *United States v. Swift & Co.*, 286 U. S. 106, 114; *United States v. Int. Harvester Co.*, 274 U. S. 693. The decree itself contains an express recognition of the court's power of modification, but such a reservation plainly added nothing to the decree and subtracted nothing from the significance of terms made an express condition of the imposed restraint. The burden was still, as it always is, on the moving party—and here it was the Government—to show that circumstances justified a change in such terms. In fact, on December 17, 1940, within three weeks of the expiration of the restraint against Chrysler, the Government sought for an extension of that restraint for another year upon the grounds that the time "was by mistake of the parties underestimated." The extension was opposed but granted by the District Court. An appeal was brought here but was dismissed on December 8, 1941, "for want of a quorum of Justices qualified to sit." *Chrysler Corporation v. United States*, 314 U. S. 583. A week later the present proceedings were begun for a further extension. The effect of the modification sought by the Government and granted by the court below was to extend until January 1, 1943, the restrictions upon Chrysler's freedom of action which were not imposed upon its principal rival.

In order to justify a modification having such drastic business consequences, it was surely incumbent upon the Government to show that it had proceeded with all deliberate speed against General Motors. The record reveals that no such showing was made. The history of the litigation against General Motors proves that it could not have been made. Although the consent decree against Chrysler was entered on November 15, 1938, the trial in the criminal action against General Motors was not begun until October 9, 1939. This trial resulted in a conviction against General Motors on November 17, 1939. Since the trial judge did not instruct the jury that affiliation as such was unlawful, and indeed the contrary, the criminal proceeding could no longer be claimed to control the validity of the affiliation prohibited by paragraph 12 of the Chrysler decree. Consequently, it is irrelevant that the criminal proceedings against General Motors were not finally concluded until this Court denied certiorari on October 13, 1941.

4 *Chrysler Corporation et al. vs. United States.*

But, in any event, the contingencies of review of a criminal conviction do not justify holding in abeyance an equity suit even though it concerns a related issue, when the determination of that equity suit within a time certain, to wit, January 1, 1941, explicitly defined the duration of the restraint imposed upon Chrysler. The appeal of the criminal conviction against General Motors was at last disposed of in the Circuit Court of Appeals on May 1, 1941. 121 F. 2d 376. But even then the Government did nothing to press the equity suit, indeed it promoted its further delay.

It was not until October 4, 1940, that the Government brought a civil suit in equity against General Motors. This was almost two years after the entry of the decree against Chrysler, and perhaps more important, less than three months before the date upon which the bar against Chrysler was to be lifted. Here again the record contains nothing to explain this period of inaction, when, by the express terms of the decree, the duty of action was laid upon the Government and the result of such action was of obvious business importance to the status of Chrysler under its decree. Nor does the record show that the Government undertook to prevent any untoward delays in the determination of the General Motors civil suit. On the contrary, no less than six times did the Government agree to extensions of the time within which General Motors should plead. On October 26, 1940, the Government acquiesced in an extension to January 20, 1941; on January 16, 1941, in an extension to January 27, 1941; on January 24, 1941, in an extension of more than three months, to May 1, 1941; on April 21, 1941, in a further extension to June 15, 1941; and on June 13, 1941, in an additional extension to June 21, 1941. On that date the Government filed an amended complaint, and on June 28, 1941, it agreed to a further extension to July 15, 1941. On the latter date General Motors requested the court that it be given a further extension; the request recited the Government's opposition to the motion because of its effect upon the Chrysler decree. The court nevertheless granted General Motors an indefinite extension. On November 29, 1941, the Government for the first time moved that General Motors be required to file an answer or other pleading. In response to this motion the court ordered that General Motors file a pleading by January 15, 1942.

This is the background of fact in the light of which the District Court was required to judge whether the Government was equitably

entitled to impose upon Chrysler for a further period the curtailment of its freedom of action embodied in the consent decree. Relevant to its determination, also, was the fact that paragraph 12 provided only that if the Government did not obtain a final order of divorcement against General Motors by January 1, 1941, then nothing in the decree against Chrysler would prohibit the latter from affiliating with a finance company. Nothing in paragraph 12 gave, or even purported to give, Chrysler any immunity from the anti-trust laws after January 1, 1941. Therefore, if the decree were not modified, it would not mean that the Government would be powerless to proceed against Chrysler if the latter resumed the activities forbidden by the decree. The Government would still be free to take any action it might have taken before Chrysler consented to the decree against it.

A court of equity is not just an umpire between two litigants. In a very special sense, the public interest is in its keeping as the conscience of the law. The circumstance that one of the parties is the Government does not in itself mean that the interest which it asserts defines and comprehends the public interest which the court must vindicate. A modification of a decree requested by the Government is not *ipso facto* a modification warranted by considerations which control equity. Regard for the proper administration of justice which makes determinations depend upon proof and not upon unsupported assertions of one of the litigants is a vital aspect of the public interest. The burden obviously rested upon the Government to show good cause for disregarding an express provision in a carefully framed decree, and extending to twice its original duration the period of restraint against Chrysler. So to enlarge the burden of the decree without any such showing by the Government is a one-sided restriction on Chrysler's freedom of action, at least of its right to prove that the restricted action is innocent. Instead of exacting such proof from the Government, the District Court cast upon Chrysler the duty of showing that it would not be prejudiced if the fetters remained after the period fixed by the decree. He who seeks relief from equity has the burden of showing that he is entitled to it. It is unfair to cast upon Chrysler the burden of proving that it would not be harmed if the Government got what it wanted. As a practical business matter, Chrysler is not standing on an abstract right to devise means of financing its sales simply because it is not ready

today with arrangements for a financial corporation, and the war precludes them. Such arrangements cannot be devised overnight. It may well take a year to get them under way.

Considering, on the one hand, the drastic economic disadvantage to which Chrysler is put in being subjected to the hazard of contempt proceedings if it takes any steps toward preparing for affiliation in the future, and, on the other hand, the failure of the Government to explain the apparent lack of diligence in prosecuting the proceedings against General Motors and to show that the modification was necessary to achieve the purposes of the consent decree, I am bound to conclude that the order of the District Court, unexplained by any opinion, was not within the proper limits of its discretion.

Mr. Justice REED joins in this dissent.

